

Developing Capabilities: A Feminist Discourse Ethics Approach

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DEVELOPING CAPABILITIES:
A FEMINIST DISCOURSE ETHICS APPROACH

By

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ABSTRACT

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This dissertation attempts to preserve the central tenets of a global moral theory called “the capabilities approach” as defended by Martha Nussbaum, but to do so in a way that better realizes its own goals of identifying gender injustices and gaining cross-cultural support by providing an alternative defense of it. Capabilities assess an individual’s well-being based on what she is able to do (actions) and who she is able to be (states of existence). Nussbaum grounds her theory in the intuitive idea that each and every person is worthy of equal respect and dignity. The problem with grounding a theory in a version of intuitionism is that it runs the risk of authoritarian moral reasoning. I argue Nussbaum, in fact, is the final arbiter who decides which intuitions are mistaken, which are not, and how to interpret what people say to fit into her own framework. This method of justifying capabilities is most problematic in cases of social inequality whereby dominant group members do not feel they need to check their intuitions against non-dominant group members, and even if they did, they are not forced to take the non-dominant group’s intuitions seriously.

I find capabilities as a global moral theory to be very promising, and I agree with Nussbaum that a list of capabilities is beneficial for identifying people who are not able to live a truly dignified human life. However, I am also sympathetic to the criticism of defending capabilities using a version of intuitionism. So, I offer an alternative method of justifying the capabilities rooted in the discourse ethics tradition. This method seeks all persons that are affected by the outcome to freely and equally share their opinion. This avoids the charge of authoritarian moral reasoning, because (1) it seeks perspectives other than simply one’s own, but unlike traditional ethics, it (2) pays special attention to the ways in which power relations shape dialogue. Ultimately, I hope to have preserved the central tenets of the capabilities approach while better realizing Nussbaum’s commitment to defending a theory that is gender sensitive and has gained cross-cultural support.

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INTRODUCTION

The capabilities approach is a global ethic that measures well-being based on what one is able to do and who one is able to be. This approach has continued to gain international attention since its implementation by the United Nations Development Programme (UNDP). The capabilities approach was first articulated by philosopher and economist Amartya Sen in the 1980s. Since that time, Martha Nussbaum has offered the most sustained philosophical elaboration and defense of the capabilities approach, and it is her version that is the focus of this dissertation. The aim of this dissertation is to provide an alternative defense of capabilities that will ultimately help better realize Nussbaum's own goals of identifying a list of capabilities that best represents what it means to live a dignified human life. Specifically, Nussbaum claims that the capabilities approach must be able to identify gender-specific harms and have the ability to garner widespread cross-cultural support. Nussbaum recognizes that global justice is not one-size-fits all and specifically that gender mitigates a person's vulnerability to various forms of injustice. Accordingly, she maintains that the capabilities must be able to identify gender-specific injustice and garner genuine cross-cultural buy in, in order to earn its status as a global moral theory. This dissertation agrees with these two claims, but argues that Nussbaum's philosophical defense of the capabilities fails to accomplish these aims. I sketch and defend an alternative philosophical defense of the capabilities that I believe is more likely to generate a list (or lists) of capabilities that achieves these ends.

In chapter one, I will provide a comprehensive account of Martha Nussbaum's version of the capabilities approach and focus especially on the various ways she has

attempted to justify the capabilities. Taking a chronological methodology, I begin with her earliest version, what I call the *flourishing version* of capabilities. This version grounds the capabilities in a “thick vague theory of the good,” which draws heavily on the Aristotelian tradition. A problem with this account is that it does not accommodate a pluralistic world since it defends a particular version of the good life. In attempt to address this concern, Nussbaum abandons the flourishing version of capabilities in favor of what I call the *dignity version* of capabilities, which is indebted to John Rawls’s political liberalism.

The dignity version generates a list of ten central capabilities that each and every human being must be given the opportunity to fulfill in order to say that their life is a truly dignified life. Nussbaum offers two methods of justification for the dignity version of capabilities—namely, reflective equilibrium and overlapping consensus. Reflective equilibrium is a process by which one attempts to bring her moral judgments into coherence with the capabilities approach; this is meant to show the superiority of capabilities over competing theories of justice because the former best coheres with our moral judgments and set of principles. One concern with this approach is that democratic societies have citizens that hold incompatible comprehensive moral and religious doctrines, and so our justification too must be compatible with more than just an individual’s intuitions. Nussbaum attempts to address this concern by showing that her list of capabilities is an object of overlapping consensus.

Drawing on feminist scholars, I will argue in Chapter 2 that Nussbaum’s methods of justifying the capabilities suffers from three major flaws. First, she covertly imports her own values into the theory. This, in itself, is not problematic because we may have

good reason for including our values into a theory. However, I am troubled by her lack of engagement with values that do not match her own. Second, the way in which she selects other diverse perspectives in order to gain cross-cultural support for her theory is arbitrary. There is no method to determine why she is seeking certain voices and ignoring others. Furthermore, although she seeks perspectives other than her own to confirm or raise questions about her approach, she offers no method to demonstrate the superiority of her own values or perspectives over others. Finally, even if we grant that Nussbaum is seeking other viewpoints from people who inhabit different social strata to help justify her theory, she has yet to consider the ways in which power dynamics impact what speakers feel comfortable sharing, how a hearer interprets what is said, and how this “data” is used to justify our theories. For instance, Nussbaum interviews two Indian women—Vasanti and Jayamma—as one way to show that people who have different worldviews share the same intuitions about dignity as Nussbaum, although she fails to discuss the ways in which the asymmetrical power relations between her and the Indian women may impact not only their responses, but her interpretation of their responses and Nussbaum’s attempt to incorporate their feedback. All of these criticisms are especially salient in light of Nussbaum’s stated goals to defend the capabilities as a gender-aware theory that has, or is at least capable of gaining wide cross-cultural support.

There seems to be an apparent impasse at this point. On the one hand, I am committed to the central tenets of the capabilities approach and that it can be a global moral theory that identifies a list of central capabilities that can be used to measure when a person is or is not living a truly dignified life. That is, I am sympathetic with this broad approach, and even find many of the capabilities on Nussbaum’s list compelling. Yet, on

the other, I am in full agreement with the above feminist critiques. So, it would appear that I would either have to adopt Nussbaum's version of the capabilities fully knowing it is riddled with justificatory concerns or outright reject her theory. I believe that if one wants to preserve the capabilities approach while still paying adequate attention to gender injustices, then one must construct a method of justifying capabilities that is sensitive to relations of social power (which includes, but is not limited to, gender) and is inclusive enough to seek all (or as many as possible) relevant perspectives.

Nussbaum's primary methods of justification, reflective equilibrium and overlapping consensus, draw on a monological method of moral reasoning, where an individual constructs a theory from his own perspective, and so, runs the risk of being unable to account for implicit biases and prejudices. One way to address this concern is to look to philosophical methods of justification that are dialogical and require critically engaging the perspectives of all those who are likely to be affected by an outcome. Discourse ethics offers just such an approach. In Chapter 3, I discuss the central tenets of a traditional version of discourse ethics and evaluate its suitability as an alternative method for justifying the capabilities. Generally speaking, traditional discourse ethics claims that moral norms are justified through universal consensus out of free and equal discursive conditions. This theory has been advocated most notably by Jürgen Habermas and Karl Otto Apel, and more recently modified by Seyla Benhabib. Although discourse ethics is a promising alternative and a move in the right direction, I argue that many of the criticisms that apply to Nussbaum also pertain to traditional versions of discourse ethics, despite discourse being wedded to a dialogical method of moral reasoning. In particular, Habermasian discourse ethics cannot generate trustworthy outcomes because it

too does not adequately account for the epistemic impact of social relations of unequal power. Furthermore, he does not discuss larger issues of structural biases and stereotypes that might permeate discussion, and so, fails to adequately accommodate the influence of diversity and inequality or (especially vulnerable and marginalized) peoples' abilities to speak and be heard.

The criticisms of both Nussbaum and discourse ethics have led me to propose, in Chapter 4, the following set of four desiderata that a method for justifying capabilities should satisfy: (1) it should facilitate cognizance of relevant power dynamics; (2) it should facilitate remaining self-critical; (3) it should have a mechanism that encourages and facilitates genuine revision; and (4) it should seek modest aims. This list is far from exhaustive, but it begins to provide some guidance for developing an alternative method of justification that may better mitigate the concerns raised against Nussbaum and traditional versions of discourse ethics. I believe these four criteria can be used to evaluate a method of justification that can ground the cross-cultural validity of a capabilities list.

My final chapter consists of two main parts. First, I articulate a version of discourse ethics, "Feminist Discourse Ethics" (FDE), that I find more plausible than traditional versions, for the purpose of justifying the capabilities. FDE is deeply rooted in Alison Jaggar's *Feminist Practical Dialogue*, which is a version of discourse ethics that is empirically rich, pragmatic, and conscious of feminist concerns. I am sympathetic to discourse ethics as a method for justifying capabilities because it is dialogical, but I am also seeking a version that better avoids the pitfalls that traditional versions of discourse ethics share with Nussbaum's monological methods. In the first part of this chapter, I

develop Jagger's "Feminist Practical Dialogue" (FPD), and draw on Iris Marion Young, Miranda Fricker and Ofelia Schutte to articulate a more robust set of constraints for moral dialogue under conditions of diversity and social inequality. Specifically, I argue that a moral discourse under these conditions should: (1) accept non-traditional forms of communication, (2) give *prima facie* moral deference to non-dominant group members, (3) support careful, deep listening by treating participants with less social power as active informants and subjects, and not as mere sources of information from which one merely gleans information, (4) accept some measure of incommensurability between interlocutors, and (5) recognize the potential need for temporarily closed or exclusive epistemic communities.

In the second part of this final chapter, I argue that FDE is better able than Nussbaum's monological methods and traditional versions of discourse ethics to meet the four adequacy criteria presented in chapter four. This is highlighted through a case study on the Bangladesh Rural Advancement Committee. Here, I show that Nussbaum and traditional versions of discourse fail to understand the complexities around high illiteracy rates in Bangladesh. I conclude by suggesting that Feminist Discourse Ethics offers a more promising way of defending the capabilities as a gender-sensitive global moral theory.

CHAPTER ONE: NUSSBAUM'S CAPABILITIES THEORY

The capabilities approach is a global moral theory that determines a person's ability to live well based on her capabilities. In this dissertation, I will closely examine Martha Nussbaum's articulation and defense of the capabilities approach as a global moral theory that assesses individual well-being. She develops a version of capabilities as a partial conception of justice that can be used as a measurement against which we can determine whether or not an individual is living a dignified human life. The hope is that in time the international community can endorse the capabilities approach, similarly to the way human rights have been adopted.

Capabilities, in general, are opportunities for one to perform actions and develop states; simply put, they are opportunities for doings and beings. For example, one may have the capability to ride her bike to work or act angrily toward her co-workers. One's capabilities are distinguished from what one is actually doing and who one is actually being—namely, one's functionings. A “function” is the realization of a capability. When a person chooses to ride her bike, she is performing the function of bike-riding; the moment an individual lashes out at her co-worker, she is manifesting the function of being angry. The difference can be summarized as follows: while capabilities are the space to perform actions, the ways in which that space is manifested is one's functioning.

The political goal for Nussbaum is capabilities, not functioning, since the decision to pursue a capability or not, and if so, how, must be respected. Consider two people performing the same function of not eating. Even though each person appears to be doing the same thing, it is important to know the motivations behind their decision. A person committed to a social justice cause may not be eating because she is on a hunger strike.

The capability of nourishment in this instance is possible, but she willfully chooses not to eat for political reasons. However, an impoverished person may desire to eat, but due to his economic circumstances, does not have the opportunity to do so. Because capability is the goal, this theory is able to accommodate variation in individuals' choices about actions and values by, for example, respecting a person's decision to participate in a hunger strike, while also providing tools for criticizing social structures that may be unjustly depriving people of access to food.

To best understand Nussbaum's capabilities theory, I will reconstruct the development of her thought somewhat chronologically. I have discerned two primary accounts of capabilities in her work, namely, the "flourishing version" and "dignity version" of capabilities, respectively. The former is rooted in what Nussbaum calls "Aristotelian internalist essentialism". Here, Nussbaum engages in a process of looking at various cultural myths and beliefs that help her identify essential features of what it means to be uniquely human. The basic functions Nussbaum identifies as central to humanness offer a conception of the good, or human flourishing. If one does not have the opportunity—that is, the capability—to fulfill all of these functions, in some sense, that person is not truly human.

There seems to be two major problems with the flourishing version of capabilities, which leads Nussbaum to reject it in favor of the dignity version. First, most people are unable to live up to its standards. In such instances, their humanness would be called into question. However, it is not their humanity that should be doubted, but their quality of life. Second, the flourishing version is too narrow to accommodate pluralism

since many people do not accept an Aristotelian account of flourishing, but rather embrace a different conception of the good based on their comprehensive doctrine.

The dignity version of capabilities attempts to address the above concerns. Nussbaum offers an intuitive account of dignity, which can be traced to the Stoics through Kant. If a person is deprived of fulfilling certain opportunities (e.g., receiving at least a secondary education), then, according to Nussbaum, she is not given the opportunity to live a dignified life. Nussbaum defends a universal list of ten central capabilities (or fundamental entitlements) that every nation must guarantee its citizens up to an adequate threshold level.

The goal of the dignity version is different than the goal of the flourishing version insofar as the former is a political project, and the latter merely an ethical project. That is, Nussbaum is no longer offering a particular conception of the good to ground the capabilities; instead, she constructs a partial conception of justice, which is compatible with many comprehensive doctrines. The framework she adopts for her conception of justice is political liberalism. Political liberalism creates the space for free and equal citizens to pursue their own ends. Contrary to the flourishing version, the dignity version allows individuals to endorse capabilities within their own worldview. So, the latter has the advantage of remaining universal in the sense that it is a global standard that can make cross-cultural judgments based on a list of capabilities, yet it does not depend on an essentialist picture of a human being.

Finally, I reconstruct Nussbaum's two primary justifications—reflective equilibrium and overlapping consensus—for the capabilities theory in general, and her list, more specifically. Nussbaum offers very little content for these justifications; so, in

order to fill the gaps, I present a brief exposition of (and motivation for) reflective equilibrium and overlapping consensus as provided by John Rawls. Reflective equilibrium serves two purposes. On the one hand, it justifies the superiority of capabilities over competing theories of justice, and, on the other, it offers a justification for an individual by showing how it best coheres with her moral judgments and set of principles. However, given the fact that democratic societies have many incompatible comprehensive moral and religious doctrines, it is important that the capabilities approach be accepted within those frameworks. The goal is to show that reasonable comprehensive doctrines have the potential to converge on the capabilities approach and her list, and thus, become objects of overlapping consensus.

1. The Flourishing Version of Capabilities

In a 1992 article, “Human Functioning and Social Justice: In Defense of Aristotelian Essentialism,” Nussbaum offers an account of capabilities that can be best described as a “thick vague theory of the good”. This section opens with an articulation of Nussbaum’s theory as it is rooted in Aristotelian internalist essentialism. I will call this the “flourishing version” because the method of internalist essentialism generates a set of basic functions that represents a conception of the good.¹ Finally, I suggest a couple reasons Nussbaum abandons internalist essentialism in favor of political liberalism as an alternative framework for capabilities.

¹ I take this version to be articulated in some of her groundbreaking articles such as “Nature, Function, and Capability: Aristotle on Political Distribution” (1988), “Aristotelian Social Democracy” (1990), “Human Functioning and Social Justice: In Defense of Aristotelian Essentialism” (1992), “Non-Relative Virtues: An Aristotelian Approach” (1993), “Human Capabilities, Female Human Beings” (1995b), and “Non-Relative Virtues: An Aristotelian Approach” (1998). This list is not meant to be exhaustive, but it does offer an approximate chronology of the flourishing version.

1.1 Internalist Essentialism

Nussbaum's (1992) early justification of the capabilities approach is what she calls "internalist essentialism," that is, a "historically grounded empirical essentialism" (208). It is an "account of the most important functions of the human being, in terms of which human life is defined" (Nussbaum 1992, 214). The process begins by having one ask, "what things are so important that we could not call a life truly human without them?" To answer this question, the social critic examines a "wide variety of self-interpretations of human beings in many times and places... The idea is that people in many different societies share a general outline of such a conception" (Nussbaum 1995b, 73).

In order to best understand the flourishing version of capabilities, it is first worth unpacking each of the two main concepts of "internalism" and "essentialism". Internalism is a method of inquiry which demands that we begin by identifying common human experiences. We realize through a process of self-discovery and interpretation that cultures share certain "spheres of experience," to borrow Nussbaum's phrase, that are most central to living a truly human life, for example, the aversion to non-beneficial pain, developing relationships with others, and expressing humor, among others (Nussbaum 1987, 27-9). By "truly human life," Nussbaum means to identify the essential features constitutive of flourishing for human beings as a kind.

Opposed to internalism, externalism is a method of inquiry that "presuppose[s] an external metaphysical foundation" (Nussbaum 1992, 208). The externalist offers a conception of human nature that transcends culture and history. For example, one could draw on science as an "appeal to external facts that can be found in human nature"

(Claassen and Düwell, 498).² The problem with externalist essentialism, according to Nussbaum (1995a), is that “human nature cannot, and need not, be validated from the outside”, but rather it can be grounded in “the most fundamental and broadly shared experiences of human beings living and reasoning together” (121). The goal is to identify “essential” features of actual human life, and if one is to offer a proposal of these features, then it is vital that the person look at current understandings of various ways of life.

The flourishing version is “essentialist,” then, insofar as it seeks activities that all human beings must be given the opportunity to perform if their life is said to be a truly human life. These functions give rise to a list of capabilities that constitute a truly human life, and while subject to revision, show that “we do have in these areas of our common humanity sufficient overlap” (Nussbaum 1992, 224). Nussbaum argues that essentialism has been a “dirty word” in philosophy for quite some time, and often for good reason. For example, some have argued that the essential nature of human beings is based on deep metaphysical realist principles. However, as noted above, this is problematic since metaphysical realism, according to Nussbaum, does not examine the world as such. So, Nussbaum’s version of essentialism begins with human beings as socially embedded creatures, and it is the lessons that get passed down to us from our communities that help illuminate the features that make us truly human.

Furthermore, the process of determining whether or not one has lived a truly human life begins by examining cultures from different times and places, including myths that separate humans from other beings. In this sense, the process is internal to

² Rutger Claassen and Marcus Düwell note Nussbaum’s criticism of Alasdair MacIntyre and Bernard Williams who have interpreted Aristotle as justifying his virtue theory through a metaphysical biology, that is, external essentialism. See Nussbaum (1995a).

human history. The goal is to identify functions that best represent the life of a human, not one for non-human animals or gods. For example, Cyclopes is a mythical creature who is not compassionate and lives in solitude. A lesson from this story reveals the importance many cultures place on the need for affiliation and caring for others. To the extent that internalism identifies shared and unique features of a life for human beings, Nussbaum calls this evaluative inquiry “essentialist”.

A distinguishing feature of the flourishing version is that it is objective, that is, it avoids being relativist and subjectivist. One cannot simply adopt the norms of one’s own culture since that would not capture what is shared and unique about *human* flourishing. If norms were restricted merely to a given culture, then there would be no universal standard by which we could judge actions or ways of life. Nussbaum (1995b) fears that with cultural relativism comes “religious taboos, the luxury of the pampered husband, educational deprivation, unequal health care, and premature death” for example (66). Furthermore, a relativist theory would run the risk of generating functions that appear to be necessary for human flourishing, but, in fact, merely represent the norms of a given community. It is for these reasons Nussbaum embraces an essentialist evaluative inquiry. The hope is that such an (internal) method of inquiry will yield a conception of the person that is universally shared.

The claim here is not that disputes between (or within) cultures on human nature do not exist, or that future challenges will not arise. Nussbaum is certainly aware of cross-cultural conflict, but takes a very unsympathetic stance towards it. In her view, if one engages in the process of “self-interpretation” and “clarification” about stories and myths that express ideas about what distinguishes humans from other beings, then one

will ultimately reach the same functions that constitute a truly human life. She asserts that the “opponent’s failure to endorse the full Aristotelian conclusion is...explained by his failure to reflect and imagine” (Nussbaum 2002, 84).

The list of capabilities proposed by internalist essentialism will serve as a “thick vague theory of the good” (Nussbaum 1992, 214). Before explicating the content of what constitutes the good life, let’s examine the key terms of “thick,” “vague,” and “good” in order to capture how these features function as a theory. First, internalist essentialism is “thick,” according to Nussbaum, because it identifies particular functions that constitute human flourishing. Nussbaum identifies functions that are shared amongst people from different cultures and times in hopes of arguing that people must have that corresponding capability. So, despite recognizing the importance of particular functions, the goal remains capabilities. The capabilities theory, to the extent that it provides specific content about the good life, can then be used to make moral judgments about how well one is living. If an individual cannot be given the opportunity to acquire these opportunities, then that person is unable to live a truly human life.

Second, a theory is said to be “vague” because it offers only an “outline sketch” of the good life. The advantage of presenting a vague (as opposed to precise) theory is that there are many ways in which one can flourish. For example, while affiliation with others is part of the good life, an individual’s affiliations cannot be predetermined for her. We can imagine a situation in which a loved one associates with people with whom we think it is not best for her to affiliate. However, all things considered, we ought to respect her decision to associate with whomever she desires. As Nussbaum (1992) says succinctly, it is better to be “vaguely right than precisely wrong” (215). To be “vaguely

right” in this instance is to value the general capability of affiliation. To be “precisely wrong” would include dictating to a friend who her affiliations ought to be. Despite how well an individual might know her friend, that person runs the risk of making a poor judgment about who is a good friend for her.

Nussbaum’s theory, then, is thick insofar as it provides substantive content of the good life, and yet remains vague enough to the extent that the particular capabilities are partially indeterminate and offer space for individual interpretation. There is a tension here in attempting to establish a theory that is both thick and vague. One runs the risk either of constructing a substantively robust list of capabilities to ensure its thickness, but which does not allow enough room for interpretation, or of being too vague such that the list is so malleable as to give rise to radically different, perhaps incommensurable, interpretations. This results in potentially further incommensurate sub-lists, instead of producing a single universally applicable list. A theory that is too thick is problematic because it does not properly respect pluralism, and one that is too thin is troubling since a single universal list of capabilities is necessary to properly evaluate how well one is able to live as a human being. Nussbaum attempts to navigate this tension and we will later evaluate whether she does so successfully.

Finally, Nussbaum offers an objective account of the good, which is necessary in order to construct the best political arrangements for people to lead a good life rather than a pluralistic conception of the good. If Nussbaum offers many conceptions of the good, she fears her theory would not represent the capabilities necessary to live a full human life. By “objective,” Nussbaum (1993a) means that her account is

justifiable by reference to reasons that do not derive merely from local traditions and practices, but rather from features of humanness that lie beneath all local

traditions and are there to be seen whether or not they are in fact recognized in local traditions (243).

Keep in mind, though, that despite not offering an account of flourishing based on cultural norms, the theory is vague, and thus allows for people in different contexts to achieve the good life in many ways. In other words, Nussbaum offers a thick but abstract account of the good that recognizes a myriad of ways to fulfill it.

One advantage of the flourishing version is that it offers the resources to criticize unjust social circumstances. For example, Nussbaum notes regions around the world where women are malnourished at exponentially higher rates than men, and it may be culturally accepted for women to nourish themselves only after all men in their lives have been nourished. If asked, these women often accept the fact that their health is secondary to the health of men. Thus, Nussbaum (1988a) claims we need an objective conception of the good to “criticize the evaluations of functionings that are actually made by people whose upbringing has been hedged round with discrimination and inequity” (175). If the theory is not objective, then it may lead people to (implicitly) “accept” their situation despite the fact that it curtails their flourishing.³

1.2 The Early List of Capabilities

Nussbaum, drawing on Aristotle, puts forth a thick vague theory of the good, which grounds capabilities in an evaluative inquiry called “internalist essentialism”. To recap, internalist essentialism is a historically rooted process of inquiry that attempts to

³ Nussbaum claims many women, often from so-called “backward cultures,” adapt their preferences to their social context. So, a woman may claim that she prefers to feed herself last despite being malnourished. The concern of adaptive preferences is part of her larger critique of utilitarianism, which claims that a right action is one that simply satisfies desires. For a further discussion of Nussbaum’s critique of adaptive preferences, see (Nussbaum 2000, 111-66).

identify essential human functions, which ground the capabilities. The evaluative process begins with one's own cultural stories and norms, and then examines them critically against other ways of life. Nussbaum believes internalist essentialism will eventually uncover "indispensable opportunities" for living a truly human life that are recognized across different times and cultures.

Nussbaum offers the following list of universally shared experiences that best captures a truly human life: (1) mortality, (2) the human body, (3) capacity for pain and pleasure, (4) cognitive capability: perceiving, imagining, and thinking, (5) early infant development, (6) practical reason, (7) affiliation with other human beings, (8) relatedness to other species and to nature, (9) humor and play and (10) separateness (Nussbaum 1992, 217-21).⁴ Nussbaum claims that the list is open-ended and always subject to revision, which is significant because we are always limited, to some degree, by our culture. A list, then, could be constructed in a way that reveals an implicit bias in favor of one's own culture and against another. Thus, a space must be created to account for learning from other cultures since it could be the case, for example, that some capabilities ought to be subtracted from the list, while others need to be added.

The ten basic capabilities express shared experiences of human life. Nonetheless, Nussbaum identifies two of them as architectonic, namely, practical reason and affiliation since they "organize" and "arrange" the others from her list. Plants can be nourished and animals have the ability to use their senses, but Nussbaum (2002) follows Aristotle in

⁴ Not all of the lists from her earliest articulations of capabilities is exactly like this one, although, there are virtually no capabilities on other lists that cannot be found here. I say "virtually" because Nussbaum makes a distinction (albeit seemingly arbitrary) in a list from 1990 between "separateness" and "strong separateness". The former says we have the capability to live our own life, and the latter says that we are able to live that life in our own surroundings and context (Nussbaum 2002, 70-1). An identical list to the one above can be seen in Nussbaum (1995b, pp. 76-80).

saying that humans are unique to the extent that the items on her list are first “planned and organized by practical reason, and, second, done with and to others” (72). For example, humor and play will require (or, at least be enhanced greatly by) having relationships with others. One could certainly play merely by oneself, or even amuse oneself, but Nussbaum argues that doing these actions with others enriches the experience.

Despite the more obvious understanding of “play,” the same cannot be said of other items on the list, including “mortality,” “the human body,” and “capacity for pain and pleasure”. As it stands, these are not capabilities in any obvious way, that is, one would not say, “we need to secure the capability of the human body”. To make sense of these valued features and experiences, I would like to briefly discern the entitlements and meanings associated with them. Mortality, for example, is a fact of life that is recognized by all cultures, which explains why Nussbaum says it influences all aspects of human existence. So, a person who has no tendency to avoid death or is immortal would live a life “so different from our own that the being could not be acknowledged as human” (Nussbaum 1992, 217).

The human body also says very little in itself. Nussbaum offers four entitlements that can be understood as part of the capability of the human body, which includes (1) food and drink, (2) shelter, (3) sexual desire, and (4) mobility. Each of these has further evaluative power since they represent the actions needed, given the type of embodied creatures we are, to live a truly human life. Nussbaum does not discuss sexual desire in much detail, except that one could live without fulfilling it unlike food, drink, and shelter. Nonetheless, the opportunity to experience sexual desire has been a long advocated

capability for Nussbaum. She argues that practices such as female genital cutting hinder women's sexual experience, including their desire and satisfaction, and violate autonomy (Nussbaum 1999, 118-29).⁵ So, while we are able to live without fulfilling the capability of sexual desire, it is central enough that people ought to have the opportunity to exercise it, if they choose to do so. The basic entitlement to sexual desire then may be used to criticize practices such as female genital cutting because it curtails one from flourishing.

Finally, the capability of pain and pleasure is a capacity all human beings share, and a society lacking this feature would be beyond the bounds of humanness. This explains why Nussbaum (1998b) includes it in her universal "spheres of experience" whereby specific features are identified within our common humanity. The way in which pain is labeled as non-beneficial will vary between and within cultures. Nonetheless, she believes that avoiding non-beneficial pain is a universal response shared by all cultures.⁶

It would be easy for one to mistake Nussbaum's essentialism to mean that she does not value autonomy since it may appear that she is dictating how people ought to live their lives in order to flourish. This is simply not the case. She is clear that the

⁵ The debate over female genital cutting is much more complex than I have space. For further discussion, see Tobin (2009).

⁶ I find "pain and pleasure" to be interesting not only because Nussbaum abandons it in her later list, but also because the normative efficacy of the capability of pain and pleasure remains unclear. She says it tells us to avoid unnecessary pain and have pleasurable experiences; so, it seems that one could interpret her as saying that a life with excessive suffering is not a truly human life. However, this does not tell us what pain and pleasure are, and to what extent we should avoid pain and pursue pleasure. She says we must avoid "non-beneficial" pain, but once again, avoiding non-beneficial pain does not explain the capability's normative force. Given her rejection of utilitarian subjective welfarism, we know that simply satisfying desires does not suffice to live a truly human life since someone may want to satisfy a pleasure otherwise considered unjust, such as a woman ensuring her husband's needs are always satisfied before her own.

To be clear, I am not denying the importance of avoiding pain and pursuing pleasure. Like Nussbaum, though, I reject utilitarian commitments of maximizing the aggregation of pleasure. If Nussbaum wants us to accept this capability as necessary for a good human life, she must tell us how it contributes to flourishing and not merely describe it as an essential feature of human beings. The demand of this capability as necessary for flourishing is of great importance considering Nussbaum says her list is ethically evaluative and not merely descriptive. Moreover, because there are other competing lists of basic entitlements, including natural law theory and Rawls's primary goods, there is further motivation for her to articulate the importance and superiority of her list of capabilities. For a list of primary goods, see John Finnis (2011, 85-90) and John Rawls (2001, 58-9).

proposed list is of capabilities, not functioning. Despite the fact that one cannot flourish by simply acknowledging that the capabilities exist, Nussbaum still respects an individual's decision to either perform the function or not. Nussbaum claims that Aristotle (and subsequently that she) would reject any conception of the good that did not leave room for practical reason or choice. The goal of the flourishing version, as an ethical doctrine, is to create the proper conditions for each person to exercise practical reason in a way that contributes to the good life.

Nussbaum demonstrates her sensitivity to attaining the goal of creating the right material conditions for individuals to possess capabilities by drawing on Aristotle's distinction between internal and external capabilities. First, *internal* capabilities are intellectual and character traits that can be developed through education. For example, a person may have an internal capability of reason, but if she has little to no education, then it will be difficult to exercise reason to its fullest extent. Second, the proper *external* conditions must be present in order for the capacity to be realized. Just as one may have an internal capability, but lack the external conditions, one may also have the right conditions and yet lack the internal capability. For example, people with severe cognitive disabilities may lack the internal capability to engage in practical reason despite having all the proper conditions that would allow reason to unfold and develop. Nussbaum (1988a) reminds us, though, that the line between internal capability and external conditions is not rigid since the "same conditions that block the activation of a trained [internal]-capability will also inhibit its development in an immature person" (164). To realize a capability, then, one must have both the internal capacity and the proper material conditions to cultivate it.

1.3 Re-considering Internalist Essentialism

In a postscript more than ten years after her influential 1990 article “Aristotelian Social Democracy” Nussbaum (2002) provides a few reasons for rejecting internalist essentialism in favor of political liberalism (90-2).⁷ First, Nussbaum attempted to preserve the Aristotelian framework, but discovered that it did not mesh with the central tenets of the capabilities approach. The capabilities approach, on the one hand, allows people to pursue their own conception of the good, while Nussbaum’s flourishing version, on the other, offers a specific account of human flourishing. To be fair, her account of the good, which is rooted in Aristotle, was meant to accommodate cultural and religious pluralism, but still it could not escape the fact that living a truly human life requires living in a very particular way, namely, one compatible with a virtue-based global ethic. So, one problem with Nussbaum’s early version of capabilities is that its conception of flourishing is too narrow insofar as certain worldviews would not be compatible with the flourishing version, yet would be acceptable on a more liberal framework.

Second, she abandons the flourishing version because it is dependent upon an essential view of the human being such that a “life that lacks any one of [the items from her list], no matter what else it has, will be lacking in humanness” (1992, 222). Arguing that a person who cannot fulfill certain capabilities in a truly human way is not fully human leads Nussbaum to the problematic claim that she lacks humanness; instead, Nussbaum needs to simply argue that she is not living a life compatible with dignity.

⁷ For a brief analysis on the relationship between Nussbaum’s earlier and later version of capabilities, see Deneulin (2002).

We begin to see a development in thought in *Women and Human Development* (2000). Here, she argues that a person who is unable to realize all central capabilities is not living a “truly human life” (Nussbaum 2000b, 250). Again, this is deeply problematic because it raises questions about whether one’s situation (of not being able to acquire all central capabilities) calls one’s humanness into question. However, as noted immediately above, the person’s humanity should not be questioned; rather, what should be questioned is the type of life she is living. So while Nussbaum has rightfully jettisoned notions of essentialism (i.e., offering a particular conception of the good) in *Women and Human Development*, she still preserves the language of living a “truly human” life.

Nussbaum does not abandon the language of “truly human” until *Frontiers of Justice*, where she replaces it with a life compatible with “human dignity”. Nussbaum (2006) explicitly says that a person who fulfills all capabilities is living a “dignified life for a human being” (184). If an individual is unable to acquire all central capabilities up to an adequate threshold level, then we can claim rightfully that she is not given an opportunity to live a life compatible with human dignity. Contrary to the flourishing version, we can say she is still fully human, but is simply not afforded the opportunity to express her humanity in a dignified manner. Rather than internalist essentialism, Nussbaum adopts the framework of political liberalism, which allows her to offer a universal list of central capabilities without being essentialist.

Finally, Nussbaum has been forced to answer the critics who have pointed out that her theory is biased against those who are cognitively disabled, cannot accommodate nonhuman animal justice, and does not consider the differences between those who inhabit radically different social positions. Nussbaum argues that her newer version of

capabilities, what I will call the “dignity version,” is better positioned to address these “frontiers of justice”. For instance, dignity can be extended to nonhuman animals by discussing what a life worthy of dignity would look like for a given nonhuman species.⁸ I will show in the final section of this chapter why Nussbaum believes the dignity version better serves those with cognitive disabilities and issues surrounding unequal social power.

In sum, the important point to keep in mind is that Nussbaum abandons the flourishing version because essentialism, as it identifies functions that represent a truly human life, wrongly calls people’s humanness into question and is too narrow to accommodate the “frontiers of justice” involving global justice, nonhuman animals, and the cognitively disabled. However, Nussbaum still aspires to preserve a universally applicable standard by which we can judge whether an individual is living well. Thus, by adopting political liberalism, which is not about ends and does not smuggle in the language of flourishing in the way that internalist essentialism does, Nussbaum attempts to remain a universalist without essentialism.

2. The Dignity Version of Capabilities

Grounding a global moral theory in Aristotelian internalist essentialism has its limitations, such as putting forth too narrow an account of flourishing, and not properly accommodating moral and religious pluralism. Nussbaum attempts to address these problems by drawing on John Rawls to provide a theoretical framework through which she can defend a version of the capabilities approach. She does not completely abandon

⁸ See Nussbaum (2006, ch. 6). Nussbaum’s capabilities approach has been applied to nonhuman animals by other theorists, including Cripps (2010), Ilea (2008), and Schinkel (2008).

Aristotle, but situates his insights within this new framework. For example, Nussbaum finds Aristotle's understanding of the person as social and dependent to be central in articulating her account of dignity, which will be used to generate a revised version of capabilities and a new list of central capabilities.

2.1 Political Liberalism

Martha Nussbaum explains, in some detail, her newfound commitment to political liberalism in a 1998 article, "Political Animals: Luck, Love, and Dignity". To my knowledge, this appears to be the first time she articulates the need for political liberalism as a framework for capabilities, in addition to the need to jettison internalist essentialism.⁹ Nussbaum (1998a) writes,

I now understand the list of central human capabilities as the core of a specifically political form of liberalism, in the Rawlsian sense. I imagine that citizens of many different comprehensive doctrines can all endorse items on the list, as things that are essential to a flourishing human life. It is neither an exhaustive account of the good nor a metaphysically grounded account. [...] Muslim traditionalists will advance one conception of womanly modesty; secular feminists will advance another... The hope is, however, that they can all agree on a liberal political conception that protects opportunities, liberties, and material quality of life for all citizens (284-5).

Political liberalism, as described above, begins with the fact that citizens are free and equal. Because a democratic society has free and equal citizens, it will likely have many competing and irreconcilable comprehensive philosophical, moral, and religious doctrines. So, political liberalism allows people to pursue their own conception of the good, and thus, it is said to accommodate pluralism within society. Global ethics accepts

⁹ It would be remiss of me to not acknowledge another article by Nussbaum in 1998, "Public Philosophy and International Feminism". She also uses the concept of "political liberalism" here, but not in any great depth; not to mention this article, unlike the one used above, does not draw the explicit contrasts between the two frameworks.

the fact that pluralism exists and maintains that it is important to have a framework that allows pluralism to thrive while still providing a way to identify injustices across national and cultural boundaries. Even though a theory of justice may be used to identify harms, it must remain compatible with reasonable comprehensive doctrines within society. For example, two religious groups may have different accounts of the afterlife, a higher power, and the soul, yet both be able to agree on some principles of justice within their own particular worldview. In this sense, justice is said to be “freestanding”. It is especially important for a theory of justice to be freestanding in a liberal pluralist society in order to demonstrate that the state’s use of power is legitimate and that the citizens accept the laws derived from it.

Nussbaum (2000b) situates capabilities within political liberalism, which “makes them specifically political goals and presents them in a manner free of any specific metaphysical grounding” (5). It is of note that capabilities for Nussbaum has always been political, but political liberalism will offer the resources to respect pluralism in a way that internalist essentialism cannot. To say the capabilities approach is “political” is not to claim the theory is not moral, but for purposes of constitution-making and offering international guidance, it is also a political project, that is, a freestanding conception of justice that can be affirmed within reasonable comprehensive doctrines. For Nussbaum (and Rawls), this includes the liberal commitments of ensuring basic equal civil and political rights for everyone.

The capabilities approach is also liberal to the extent that well-being ought to be measured non-aggregatively, that is, priority must be given to the individual over the group. The Kantian principle that each person ought to be treated as an end in herself is

reformulated as a “*principle of each person’s capability*: the capabilities sought are sought for each and every person, not...for groups or families or states or other corporate bodies” (Nussbaum 2000b, 74, her emphasis). Nussbaum’s acceptance of liberalism gives rise to the priority of the individual over the group.

It seems that Nussbaum merely asserts the fact that all human beings are worthy of living a dignified human life. She does not argue for it except in a quasi-Kantian fashion mentioned above. That is, each person, not group, is entitled to such secure capabilities compatible with dignity. However, no independent justification is given for why each person simply in virtue of her or his humanness is entitled to such a life. At best, she claims no one can deny humanness to all persons because we can identify people in our “daily life” to whom we already grant the status of humanity. Thus if we deny humanness to others, we would be engaging in some form of performative contradiction.

Nussbaum draws on an “imaginary recalcitrant husband” who interacts and is attentive to his wife in various domains of her life, including childrearing, household duties, and sexual relations, to demonstrate the intuitive plausibility that allows us all to grant that women are as much full persons as men. She argues that such a husband will admit, based on experience, that women have the “basic capabilities to perform a wide variety of the most important human functions [...] They have the ability to think and reason, just as males do. And, finally, they have responsiveness to ethical distinctions...between the good and the bad” (1995b, 97). By the husband acknowledging her ability to perform truly human functions, he is implicitly granting her status as a full human person. Nussbaum believes this argument reveals a “universal conception of the

human being in claims of justice for women” since the husband cannot fail to recognize a woman’s full status as a human being given his daily interactions with her.

Margaret Walker questions Nussbaum’s “symmetrical recognition” commitment, that is, one’s ability to recognize the moral standing of another as like oneself. The problem with Nussbaum’s argument, according to Walker, is that there is “no incompatibility between seeing one’s wife as human and continuing to believe that certain things are better for human beings *of her kind*, where the relevant kind is ‘women’” (Walker 2003, 148, her emphasis). So, there is nothing uniquely just with having her humanity recognized since that can be done in accordance with the expectation that she ought to perform certain tasks simply in virtue of being a woman. This is problematic for Nussbaum since she believes a “universal conception” is a claim of “justice for women”. Furthermore, a “closer look” and “little reflection” on history will not reveal the common features shared amongst all human beings (Walker 2003, 148).

Susan Wolf, in a commentary on Nussbaum’s capabilities, explains that throughout history human nature has actually been defined as male human nature. If we want to avoid denying full humanity to an individual, then we must ensure that “women as well as men participate in the task of theory construction, that both be sensitive to the history and the dangers of excluding women from consideration” (Wolf 1995, 113). In other words, there are many counter-examples to Nussbaum throughout history of a dominant group, in this case men, denying full humanity to a non-dominant group despite interacting with them very closely. As a matter of fact, it is such interactions that often perpetuate the conditions for ongoing oppression. These early criticisms are important to

keep in mind because they highlight problems with Nussbaum's liberal justification of the capabilities that foreshadow the feminist criticisms of Nussbaum's defense of the capabilities that I discuss in the next chapter.

Nussbaum (1998) sums up the difference between Aristotelian internalist essentialism and political liberalism nicely when she says the latter "is not grounded in any theory of the human being that goes beneath politics" (285). The problem, once again, with the flourishing version is that it is rooted in an essential picture of humanness that offers a particular conception of the good for flourishing rather than protecting a political subject who is free and equal to pursue her own good, which is compatible with a theory of justice.

2.2 The Emergence of Dignity as Central to Capabilities

The capabilities approach needs a new grounding now that it has been situated within political liberalism. The new framework cannot be rooted in a version of flourishing since political liberalism remains neutral towards the good life. So, Nussbaum draws on the intuitive idea of human dignity. For Nussbaum, political liberalism and dignity emerge in conjunction with one another and neither is taken as conceptually or practically prior to the other.

Nussbaum (2011) contends that the dignity of a human being is an "intuitive starting point [that] offers definite, albeit highly general, guidance" (78). By "intuitive," she means that we have the basic ability to agree when someone is (or is not) afforded a truly dignified life. We may not be given all the particulars of a situation, but we can understand that not being educated or granted the opportunity to play, for example, are

harmful. However, there is great risk basing an entire political doctrine on intuitions. One could question whose intuitions are being represented, to what degree those intuitions have been challenged by others, and whether the intuitions genuinely represent an individual's beliefs; or one could simply challenge a framework that is built entirely on intuitions as reliable guides since (as Nussbaum acknowledges) they are shaped so heavily by social and cultural norms.

Despite the so-called intuitive nature of dignity, Nussbaum acknowledges, upon further reflection, that the concept is not all that clear. At a basic level, people have a minimal sense of decency. However, when we articulate what we mean by dignity, substantive content from our conception of the good (e.g., religious commitments) begins to define it. Defining dignity in terms of one's comprehensive doctrine may be permissible morally and religiously, but is not an appropriate basis to ground political principles. For example, if dignity were interpreted according to a Protestant worldview and this represented the state, then those who did not hold such views would be either forced to assimilate or fear repercussions. Nussbaum (2007) argues that if the state adopted a version of dignity that did not respect other religious traditions, then it would be an attack on one's "equal dignity that consists in being told that you are not a fully equal citizen because of your commitment to your religion" (341). Thus, she aspires to use a conception of dignity that is compatible with all reasonable comprehensive doctrines, but applying it requires articulating its central tenets.

Nussbaum opens her discussion of human dignity with the Stoics, who maintain that human beings gain their worth by possessing the capacity for rationality. Because the worth of each rational individual is "boundless," all rational persons possess the same

equal worth. In other words, one's human nature is bound up with one's rationality, and so a person is worthy of respect and dignity insofar as she is a rational agent. Nussbaum is sympathetic to Stoicism insofar as it does not matter if a person is a woman or man, poor or rich, or slave or free; as long as that individual has rational capacities, she has the same worth as anyone else. Nussbaum retrieves the Stoic commitment to "inalienable worth". Despite her support of the belief that each and every person ought to be treated with dignity, she departs from the Stoics in maintaining that the source of dignity is grounded in more than rationality.

In order to extend dignity beyond rationality, Nussbaum draws on Aristotelian insights. A human being for Nussbaum, following Aristotle, is a thorough unification of rationality and animality, whereby the former is merely one aspect of the latter. Because rationality is only one part of animality, rationality no longer grounds dignity on its own. Dignity for human beings is now manifested in three ways—namely, through and in practical reason, sociability, and bodily need. Nussbaum's account of human nature allows her to go beyond rationality, to include our "vulnerabilities" and relationships of "dependency" and "asymmetry" (i.e., human need) as worthy of dignity. For example, living a dignified life will not only include developing practical reason, but also creating opportunities for people to interact socially and providing nourishment for all human beings to meet (at minimum) their basic needs.

The Aristotelian account of the person is "ethically evaluative," that is, a process that selects actual features of a human life whereby not "exercising one of them, at any level, is not a fully human life, a life worthy of dignity, even if the others are present" (Nussbaum 2006, 181). Even though Nussbaum is grounding her theory in political

liberalism, she continues to draw from Aristotle to articulate a conception of human dignity, and subsequently, help identify a universal list of capabilities. Political liberalism offers people the opportunity to pursue their conception of the good, however, not just any conception will be permissible within a liberal framework. We need constraints on a theory of justice to aid in identifying when a person is harmed or living well. Nussbaum has abandoned flourishing as the standard of living a truly human life and dignity now serves that role. A person has an opportunity to live well for Nussbaum when she is able to exercise capabilities compatible with dignity.

Nussbaum, however, has not completely abandoned the general method from the flourishing version. The dignity version engages in another essentialist-like project insofar as she is now attempting to offer capabilities compatible with dignity rather than to being human, and in doing so, she draws extensively from Aristotle. This is significant because it shows that she has not only preserved aspects of Aristotelian thought, but also continued her general commitment to a universal (essential) list of capabilities. I am not claiming that the contrasts between the two versions of capabilities are insignificant since dignity allows for more latitude on individuals' choosing how to live than the narrow conception of the flourishing version.

In sum, the flourishing version and dignity version of capabilities both draw on Aristotelian insights. However, their appropriation of those insights is very different. The former uses an Aristotelian methodology to defend a version of flourishing based on a set of essentially human functions, which makes this project overtly ethical. More specifically, the functions from her early list are a result of an essentialist account of the human being. In contrast, the dignity version offers an alternative kind of essentialism; it

is part of a political project built on an egalitarian principle that each and every person is worthy of a life compatible with dignity. This life for Nussbaum is expressed through a list of capabilities. The dignity version has an advantage of not offering too specific of a list because its goal is not to identify the specific features of human flourishing, but simply general guidelines of what constitutes a dignified life.

2.3 Understanding Capabilities through Dignity

The precise relationship between capabilities and dignity thus far has not been spelled out very clearly by Nussbaum. I have attempted to construct a reasonably cohesive account of their relationship through her various works. Now, I would like to show that there seems to be textual evidence to support the claim that dignity is understood through capabilities and not vice-versa. In the previous section I argued that dignity provides a new grounding for capabilities and this interpretation will not be abandoned here. However, this section will discuss capabilities as constitutive of dignity. These two points are not inconsistent, and, in fact, complement each other well since her particular list of capabilities will emerge from a specific account of dignity. In other words, dignity both grounds capabilities and provides content to the list.

Nussbaum contends that her list of capabilities should not be understood as independent from, or prior to, an account of dignity, but rather as an expression of dignity. The guiding notion to determine the content of the list is not dignity itself, “as if that could be separated from capabilities, but, rather, that of a life with, or worthy of, human dignity...at least in part, by having the capabilities on the list” (Nussbaum 2006, 162). Furthermore, Nussbaum (2006) claims her list is “*implicit* in the very notions of

human dignity" (155, emphasis added), and "*implicated* in the idea of human dignity" (Nussbaum 2011, 32, emphasis added). Furthermore, she claims these fundamental entitlements are "very central *prerequisites* of a life worthy of human dignity" (2008, 361, emphasis added). The concept of a "prerequisite" is not the same as something that is "implicated" or "implied". Nonetheless, despite Nussbaum's lack of clarity on the relationship between these concepts, we can discern from what she says that the capabilities are in some sense constitutive of a dignified human life. Because dignity is understood through rationality, sociability, and bodily need, her list of central capabilities will also need to be defined as such.

Joel Feinberg's "rights-as-observance" analysis is helpful to understand how Nussbaum connects dignity with capabilities. Feinberg argues that we cannot have respect for human dignity without respect for their rights. Justifying human rights does not entail a wholly independent appeal to respect for human dignity, but rights are already presupposed in the account of dignity. In other words, we cannot respect human dignity without first knowing the content of one's rights. Consider an example Michael Rosen borrows from Feinberg. Feinberg claims that we can no more "observe the law without knowing that there was a speed limit" (Rosen, 57). One could refer to this as the "observance view" since the content of X cannot be identified until whatever X refers to has been observed. Respecting the law, then, entails knowing something about its content, such as the speed limit. Likewise, we cannot simply demand that everyone be treated with dignity until the content of dignity is clear. Nussbaum's version advocates

for “capabilities-as-observance” since her account of dignity cannot be understood properly without articulating a set of fundamental entitlements.¹⁰

2.4 A Revised List

The transition from constructing a list of capabilities grounded in an Aristotelian theory of the good to one based on political liberalism and rooted in dignity has led to a slightly different list. I believe Nussbaum offers two main versions of her list, the first of

¹⁰ Despite Nussbaum’s commitment to capabilities over human rights, she believes their “very close” relationship explains how capabilities is a “species” of human rights, that is, a kind of global moral theory that offers a set of universal values that must be guaranteed to each and every person. In an article contributing to a special issue on “human rights and capabilities,” Nussbaum offers the following three reasons in favor of the capabilities approach over human rights. See Special Issue: On Human Rights and Capabilities, *Journal of Human Development and Capabilities* 12 (1), 2011. First, the language of capabilities does not imply a Western imposition on colonized peoples, which she fears is embedded in rights-language. She mentions frequently that capabilities language is “down-to-earth” because it is common language used by people “all over the world...in their daily activities” (Nussbaum 2011a, 29). Second, the rights tradition is rather unclear on state intervention for securing rights and often remains absent; however, the capabilities approach demands the “state has an affirmative task of securing capabilities” (32). Finally, human rights are divided frequently into first generation rights, civil and political rights, second generation rights, and socio-economic rights. Meanwhile, Nussbaum argues that this distinction is problematic because it “suggests that the political and civil rights have no economic and social preconditions” (33). This is not the case since running for public office, for instance, may be a political right, however its realization is greatly hindered if one is extremely poor or lacks education.

It is beyond the scope of the project to assess each of the above claims in detail, but I should mention briefly that human rights advocates have responses to each of Nussbaum’s points. In regards to the first point, she would need to show in what ways human rights is any more of a Western imposition than capabilities. For instance, it cannot be a commitment to autonomy and individual freedom for human rights since those commitments are also shared with capabilities proponents. Not to mention, the language of capabilities is not as “common sense” as Nussbaum maintains. In fact, the term “capabilities” is understood differently amongst capabilities theorists. This discussion can be found in Robeyns (2005, 100-2). Furthermore, Jack Donnelly (2003) argues against the second point by noting that securing rights is not merely a matter of state-absence since all “human rights require both positive action and restraint on the part of the state” (30). Other human rights theorists, such as Charles Beitz (2009) and James Nickel (2007) have made similar arguments. Finally, while it is certainly true that human rights have been traditionally divided into first, second, and even third generation rights, this does not imply that specific rights are not interconnected. It could be the case that in order to truly have a fair hearing one may need to have a proper amount of resources.

So, it is not clear that Nussbaum successfully defends the capabilities approach over human rights. Nonetheless, I agree with Nussbaum’s (2011a) claim that the two theories should “march forward as allies in the combat against an exclusive focus on economic growth, and for an approach to development that focuses on people’s real needs and urgent entitlements” (37). To this end, Nussbaum offers a list of central capabilities, which best represents that of a dignified human life.

which can be found in section one. The second version of Nussbaum's list of ten central capabilities (or fundamental entitlements) include¹¹:

1. *Life* – Being able to live the normal length of a human life; to not die prematurely or before one's life is so reduced as to no longer be worth living.
2. *Bodily Health* – Being able to have good health, which includes reproductive health, adequate nourishment and shelter.
3. *Bodily Integrity* – Being able to move freely; to live free from assault, including sexual and domestic assault; to have the opportunity for sexual satisfaction and choice in reproductive matters.
4. *Senses, Imagination, and Thought* – Being able to use the senses to imagine, think, and reason in a "truly human way," that is, one cultivated by an adequate education. Being able to use one's mind in ways protected by artistic speech and freedom of religious exercise. Also, the ability to have pleasurable experiences and avoid non-beneficial pain.
5. *Emotions* – Being able to have attachments to things and people outside ourselves, love those who care for us, and express justified anger.
6. *Practical Reason* – Being able to form a conception of the good and critically reflect on it.
7. *Affiliation*
 - A. Being able to live with and towards others and engage in various social interactions.

¹¹ This list can be found in the following major works of Nussbaum (1999, 41-2; 2000b, 78-80; 2006, 76-8; 2011b, 33-4).

B. To have the social bases for self-respect and non-humiliation, and to be treated as a dignified being worthy of equal respect.

8. *Other Species* – Being able to live with concern for and in relation to animals, plants, and the eco-system in general.

9. *Play* – Being able to laugh, play, and enjoy recreational activities.

10. *Control over One's Environment*

A. *Political* – Being able to participate effectively in political choices that govern one's life, including protections of free speech and association.

B. *Material* – Being able to hold property (land and movable goods) on an equal basis with others; and to have the right to seek employment equally to others. In work, being able to exercise practical reason and engage in meaningful relationships of mutual recognition with other workers.

These ten central capabilities are intentionally very abstract in order to create the space for them to be fulfilled in many ways. For example, the capability of senses, imagination, and thought allows people from not only different social strata, but even intra-household, to possess the capability in many ways. Furthermore, this list, like her flourishing version, is not fixed or static, but she claims it is always subject to revision. She claims further, that because her list is open to change, it is able to accommodate cultural and religious pluralism. Finally, in order to live a dignified human life, one must be given the opportunity to acquire all central capabilities up to an adequate threshold level. If the threshold standard cannot be secured, then a state is not fully just.

I have discerned a few sub-capabilities from Nussbaum's list. I present them here because she references them frequently throughout her works, despite the fact that they

do not appear on her list, and because some of my later criticisms target these sub-capabilities. Nussbaum never discusses the relationship between the vagueness of the central capabilities and the sub-capabilities, which can be derived from them except that her list must remain highly abstract so that it can be realized differently in various contexts.

The fourth capability, for example, entails that of political and artistic freedom of expression. Freedom of expression is not an explicit capability on the list, but when understood properly, the right to express oneself without fear of harm is included in the general capability of senses, imagination, and thought. The capability of education is also included in the fourth capability since thought entails having the proper training in basic math, literacy, and science. Another capability Nussbaum references often, but cannot be found directly on the list is “access to credit”. It is derived as follows. The capability of control over one’s environment has both a political and material component. Political control includes protections of free speech and association, and material control allows one to have the same opportunity as others to hold property. One important aspect of holding property is having access to credit; thus, Nussbaum endorses the important capability of “access to credit”.

There are some differences between the early and later lists. First, and most importantly, the early list represents functions based on shared experiences. For example, human beings seem to share their aversion to non-beneficial pain universally and recognize their fate as mortal beings. On the other hand, the later list represents a list of capabilities compatible with a dignified life.

Second, some capabilities were retracted (e.g., early infant development) and others added (e.g., emotions and control over one's environment). For instance, Nussbaum (1992) explained the capability of early infant development as babies who recognize their "helplessness, experiencing their alternating closeness and distance... on whom they depend" (218). The notion that human beings are dependent is never abandoned, and indeed as I have shown, it plays a prominent role in her conception of dignity. Thus, to some degree, it is implicitly present in all capabilities on her list and, perhaps, this is a plausible reason why it no longer needs to be stated explicitly. I note this capability in particular to highlight what might appear as a difference between her two lists, but further examination reveals its presence in both. This shows that just as there are common strands between the types of essentialism found in the flourishing and dignity version of capabilities, so too with particular capabilities.

Another capability that is found on her previous list, but not the newer one is "sexual desire". It is not clear how sexual desire is a capability; it seems that in order for a capability to be central, it needs to be more than simply a desire. As I argued in Section 1.2, one could interpret the capability of sexual desire as providing a criticism of female genital cutting to the extent that it harmfully impacts a woman's sexual experience. In that respect, it may be similar to the capability of "bodily integrity," which is on the newer list, however, bodily integrity is much broader than sexual desire since it includes leading a life free from domestic and sexual assault and not merely creating the space to be capable of having sexual desires.

A capability shift from sexual desire to bodily integrity is more than a terminological change, but also a conceptual one. The flourishing version of the list

sought to identify experiences shared by everyone, which makes performing its function truly human. Because having sexual desires for Nussbaum is a feature shared by nearly all human beings, she included it on her list. A problem with the capability of sexual desire is that it merely describes a feature of human beings, but offers little to no normative guidance. In contrast, the dignity version seeks capabilities that uphold what it means to live a life of dignity, which includes living free from sexual assault. However, one should not mistake the dignity version as telling us how we ought to live our lives since it is situated within a politically liberal framework. This allows an individual the option to fulfill a given capability from Nussbaum's list, if she chooses. The important point is not whether she possesses the capability or not, but that she has the potential to do so.

Other capabilities appear to be jettisoned, but, upon closer examination they have in fact returned in a different guise. For example, the flourishing list included mortality, which cannot be found in the dignity version; however, it has been replaced with "life" and "bodily integrity," respectively. The capability of mortality/life entails being honest that human beings are not immortal, but despite this inevitability, we still grieve at the loss of a loved one. Nussbaum never explicitly says which capabilities can be discerned from mortality/life, but I would suggest two possible candidates, both of which are compatible with the revised list. First, human beings should be able to live their normal lifespan, and second, we should be given the opportunity to grieve properly at the loss of a loved one.

In *Women and Human Development*, Nussbaum offers a glimpse into a reason why changes were made to her list, which will be important when we consider her

methods of justifying the capabilities and her claim that she consulted a wide-range of diverse perspectives. She explains that after “discussions” with people from India, primary changes were made, which include “bodily integrity and control over one’s environment...and a new emphasis on dignity and non-humiliation” (Nussbaum 2000b, 78 n.82). She does not tell us the extent of these discussions and with whom they took place, but they had an impact on her. In Chapter 2, I will examine the plausibility of these discussions on the alterations and justifications of the list.

3. Expanding on the Dignity Version

3.1 Introduction

The dignity version of capabilities demands that each and every citizen be given the opportunity to exercise all capabilities from her list up to an adequate threshold level. This section will explore thresholds for some capabilities from the list. I will then explain a problem surrounding individuals who are not given the opportunity to fulfill all central capabilities, but instead are forced to choose between one central capability or another. Nussbaum calls such decisions “tragic”. I will suggest, following Nussbaum, that one possible way to temporarily address tragic choices is to identify capabilities that lead to the possibility of manifesting other capabilities, namely, “fertile capabilities”.

3.2 Thresholds and Tragic Dilemmas

Nussbaum argues that in order to live a dignified human life the capabilities from her list cannot be met at just any level, but must satisfy a certain threshold. Any society that falls short of ensuring that each individual is able to satisfy the threshold for all

capabilities on the list cannot be considered just. However, the threshold cannot be set too high. Nussbaum (2011b) is aware of navigating this space when she writes that we need to “select a level that is aspirational but not utopian” (42). This is a precarious position since it is difficult enough to identify tangibly the “appropriate” threshold, much less articulate it. Nussbaum settles on the claim that thresholds must be set at a “reasonable level”. One can go beyond the threshold requirement. For instance, Nussbaum argues that the threshold for children is secondary education, but one may pursue post-secondary education if one chooses. Nussbaum admits that this is one of the largest gaps in her theory; that is, discussing the nature of justice above the threshold.

There is no exact measurement to determine a reasonable threshold level. So, Nussbaum advocates for approximate and general levels for two reasons: first, the threshold may shift over time, and second, the appropriate threshold level, at the margin, may require adapting to its context. For example, Nussbaum says we can argue over whether leaving school at an appropriate age should be 17, 18, or 19, but not 12 in light of employment opportunities.

The fact that capabilities must be secured at an appropriate threshold level for everyone does not tell us how much each person should be guaranteed. Nussbaum says some capabilities must be secured “equally,” while others only “adequately”. Capabilities such as political, religious and civil liberties can be “*adequately* secured only if they are *equally* secured” (Nussbaum 2006, 293, her emphasis). Equal security must be the goal of capabilities in situations where any lack of that capability would result in harming one’s dignity. For instance, there is no adequate amount of voting rights that some deserve more than others. All citizens deserve the equal right to vote.

However, not all capabilities demand equality. For instance, adequate housing is required in order to satisfy the capability of “control over one's environment”. Recall, there are two ways to have control over one's environment—politically and materially. Material control over one's environment includes the ability to hold property and have the same access to property as others. Nussbaum says adequacy could be understood as an “ample minimum”. Houses do not need to be equal in size, but everyone should have adequate housing and shelter compatible with human dignity.

Nussbaum acknowledges that achieving an adequate level of capabilities for each and every person is a fantasy in the current state of affairs, and thus we are often left with what Nussbaum calls “tragic choices”. A “tragic choice” occurs when two or more central capabilities collide, and therefore any action will involve wronging someone.¹² Tragic dilemmas are especially problematic for Nussbaum since none of her central capabilities can be expended for another. She presents the following example. In Kerala, a state in India, it was more advantageous for children to stay home and make an income to help their family meet basic needs than to attend school. The tragic choice here involves the children receiving an education, on the one hand, and attempting to provide a basic living for their family, on the other. Nussbaum maintains that both education and nourishment are fundamental entitlements; thus, for an individual to be forced into a position to choose one or the other is tragic.

One possible response to the tragic dilemma is to offer more of a certain capability in order to compensate for the loss of another capability. However, Nussbaum's (2006) approach forbids trade-offs since these fundamental entitlements are “radically nonfungible,” that is, a lack in “one area cannot be made up simply by giving

¹² For a full discussion of tragic choices, see Nussbaum (2000a).

people a larger amount of another capability” (166-7). In contrast to aggregate approaches that could offer more of something else to compensate for a loss, Nussbaum’s capabilities approach demands all central capabilities be secured at an appropriate level for each and every citizen.

Nussbaum's primary solution to a tragic dilemma problem is “ingenuity and effort,” and she praises the state of Kerala as one example of what she means by solving a tragic dilemma in this way.¹³ Kerala set up a school program with “flexible hours” that also offered a “nutritious midday meal”. This solution nearly wiped out illiteracy in the state. India would eventually adopt the midday mandatory meal for all schools. Nussbaum praises Kerala for their ingenuity and effort to wipe out illiteracy while still providing nutrition to the children. Nussbaum (2011b) demands the state “ask what the best intervention point is to create a future in which this sort of choice does not confront people” when individuals are faced with a tragic choice (38). For Kerala, that point was offering midday meals to offset the wages otherwise earned from not attending school, in addition to more flexible school hours.

I find the Kerala example compelling. It illustrates Nussbaum’s point that justice requires securing each of the central capabilities for every citizen up to an adequate threshold level. However, we are not afforded many details about the case. It would be important to know how this decision has impacted employment and the families these

¹³ It is beyond the scope of this dissertation to spell out fertile capabilities in any detail, but it’s worth noting this as a strategy Nussbaum uses to address tragic dilemmas. Drawing on concepts from Jonathan Wolff and Avner De-Shalit, Nussbaum pursues a strategy for handling tragic dilemmas that appeals to the idea of fertile capabilities. Fertile capabilities explain how and why it might be necessary, in certain contexts, to privilege certain capabilities. The ultimate goal remains to ensure everyone has the ability to acquire all central capabilities, however, in instances where this is not possible, privileging certain capabilities, namely, those fertile in that context, become a means to realize as many central capabilities as possible. Nussbaum (2011b) claims we should seek fertile capabilities in order to (1) identify tendencies to alleviate corrosive disadvantages and (2) prepare for a tragedy-free future (45).

children were helping to support. Nonetheless, a greater concern remains with the solution of ingenuity and effort. That is, Nussbaum offers a resolution of what one state did to address a tragic choice, but we are still left with no principled way of moving forward for those situations in which there are in fact no options that are not tragic.

4. Justifying the Dignity Version

Even though the capabilities theory and list are already constructed, the moral and political legitimacy of them are highly dependent on their justification. Nussbaum's initial justificatory strategy for the capabilities offers a weak defense of capabilities as justified norms for liberal societies through an imaginative exercise. However, Nussbaum desires a stronger grounding for capabilities. Since she is operating within the framework of political liberalism, Nussbaum seeks justifications that are compatible with competing comprehensive doctrines, and thus not wed to any one doctrine in particular. She finds the methods of reflective equilibrium and overlapping consensus effective to this end.

It is very difficult to offer a single, coherent account of Nussbaum's uses of reflective equilibrium and overlapping consensus because she says very little about the nature of the justificatory strategies themselves. She dedicates no more than a couple pages in any of her major works to either of them. As a matter of fact, reflective equilibrium is almost completely ignored in *Frontiers*. So, I draw on Rawls to help fill these gaps. In *Frontiers of Justice*, her most comprehensive work on the dignity version of capabilities, she says nearly nothing about reflective equilibrium other than the fact that she spelled it out in *Women and Human Development* (5) and that it constitutes, along with overlapping consensus, part of the Rawlsian "holistic justification" (389). She

does briefly elaborate reflective equilibrium in her 2000 manuscript, however, she never explains some of the key elements demanded by it. For example, the reader is left not knowing what ought to come into equilibrium or what determines which doctrines are worthy of becoming an object of overlapping consensus. So while she uses the terms “reflective equilibrium” and “overlapping consensus” in all her capabilities works since 1998, there is very little substance to them. She leaves gaps in the theory that I will attempt to address.

Moreover, even when she discusses the justifications, the terms are rather unclear. In *Women and Human Development*, for instance, Nussbaum distinguishes between narrow and wide reflective equilibrium. She says that wide reflective equilibrium, unlike the narrow method, will consider “not only our own judgments...but also the judgments of our fellow citizens” (Nussbaum 2000, 102). A footnote to this quote says that reflective equilibrium is “intersubjective”. A similar passage is also explained in her latest capabilities book, *Creating Capabilities*, where she claims that achieving equilibrium is a “multivocal character: justification is achieved not by individuals acting alone but by debate among Socratically deliberating individuals” (77). She says this understanding of reflective equilibrium is Rawlsian, but that hardly seems to be the case since he never demanded the need for another agent in this process. There seems to be a larger problem with her account of reflective equilibrium, namely, the process to achieve equilibrium is performed in the theorizer’s mind, and yet she insists that it is a result of dialogue. So she either misunderstands Rawls’s use of the term “reflective equilibrium” (which is doubtful) or she has created a new meaning for them without clearly explaining the concepts.

Claassen and Düwell express a similar frustration with Nussbaum's later justificatory strategies. They argue that she presents "at least three methods simultaneously, without reflecting on their mutual compatibility" (500).¹⁴ Specifically, overlapping consensus and reflective equilibrium are "completely different method[s] of justification and it is *prima facie* hard to see how the two may be reconciled" (Claassen and Düwell, 501). I am sympathetic to their concern. In an attempt to reconcile the two justificatory strategies of reflective equilibrium and overlapping consensus, I will explain the terms as articulated by Rawls, and then show how they can be used to justify the capabilities approach in a way Nussbaum wishes.

4.1 Weak "Justification" of Capabilities

Nussbaum (2006) argues that the intuitive force of each capability is a result of "imagining a form of life" without that capability (78). This method is similar to Aristotelian internalist essentialism insofar as we, as individual theorizers, are pondering features of human life that are uniquely human. However, unlike internalist essentialism, the imaginative exercise does not demand that we confront beliefs and practices from other societies, and it is not situated within an Aristotelian framework. I believe Nussbaum uses this method as a starting point to subject particular capabilities that constitute her list to further scrutiny.

Consider, for example, the capability of play. Play refers to having the opportunity to laugh and enjoy recreational activities, following a strict set of rules in

¹⁴ I am only discussing two of Nussbaum's justifications because they are most central to her theory. However, it is worth mentioning others she considers, for example, imaginative exercises (See Section 2.5), narratives (Nussbaum 2011b, chapter 1), and a "limited and ancillary role" to Jean Hampton's informed-desire proceduralism (Nussbaum 2000, 158-61).

attempt to win a game or competition, or simply an “openness to being a fool” (Lugones 1987). Nussbaum’s imaginative exercise asks us to imagine a life without play or a life of being forced to “play” in a particular way. In the former case, an individual would be deterred from fully expressing herself, for instance, from using her imagination and emotions, gaining and strengthening relationships, and receiving a break from the challenges and monotony of daily routines. This explains why living a dignified human life entails the opportunity to play. In the latter case, if one is commanded to play, is it really play? The answer is “no” because “if we dragoon people into a total mode of functioning, we are not fully respectful of them” (Nussbaum 2000b, 160). Play, then, cannot be coerced or forced since it would no longer be play, and it would violate one’s dignity insofar as a person is deprived of the opportunities to decide for herself whether she will play or not, and how she will do so. The capability of play makes the list because if a person is denied the opportunity to play, then she would be missing a key feature of a dignified life.

An easy initial objection to this way of justifying Nussbaum’s list of capabilities is that it seems viciously circular. Nussbaum appears to define what constitutes a dignified life through the list of capabilities, on the one hand, and yet maintains that capabilities are an expression of dignity, on the other, that we can intuitively grasp through this imaginative exercise. Nussbaum doesn’t attempt to avoid the circularity problem by offering an independent account of dignity and then showing how the capabilities is linked to it. Rather, she simply acknowledges that we cannot “look at a life or listen to a story without having some preliminary hunches about what is significant” (Nussbaum 2011, 15). So Nussbaum seems to answer the above problem with one’s

“hunches”. In other words, the initial criterion to ground or justify her list of capabilities as the right list is in one’s own gut-reactions, so to speak. Nussbaum recognizes this is insufficient to provide a strong justification of the capabilities as universally valid norms, but she nonetheless finds it as a useful starting point because she thinks many of us do and will share these intuitions.

The above example is meant to illustrate two points. First, Nussbaum utilizes these types of imaginative exercises as a way of motivating a weak justification for her list. I say “motivating” because full justifications are a result of general agreement on the capabilities list. All theories must begin with assumptions, and then further justification for those original commitments can be given. Nussbaum starts with a list of central capabilities, which is an expression of her account of dignity and invites us to see if we could really imagine a dignified life without even one of them, and if we cannot, then her list is to some degree justified.

Second, we gain a better understanding of Nussbaum’s account of dignity. We learn that the capabilities list is her substantive account of a dignified human life, which becomes the basis for measuring and evaluating cross-cultural quality of life judgments. Again, the intuitive exercise does not fully accomplish Nussbaum’s ultimate goal of fully evaluating whether an individual is able to realize all ten central capabilities. However, an individual’s “preliminary hunches” offers the first step toward identifying which capabilities might possibly be the standard against which we judge a person’s well-being.

I have argued that the list should not be divorced from Nussbaum’s account of human dignity but taken as constitutive of it. Assuming one accepts her basic idea of human dignity, which entails the opportunity to secure the ten central capabilities on her

list up to an adequate threshold level, then in principle one would also seem to endorse her single, universal list of central capabilities as fundamental entitlements (as opposed to a thick conception of the good life) to be ensured for each and every citizen.

Intuitions or hunches in regards to which capabilities seem most appealing will vary between and within cultures. So, Nussbaum's next move is to bolster support for her intuitions by demonstrating that she has refined her beliefs by considering alternative perspectives. Nussbaum calls this a "narrative" method of justification.

4.2 The Narrative Approach

The narrative approach purports to go beyond a crude intuitionism because it aspires to consult the intuitions of diversity situated others. Nussbaum employs this method when she interviews two Indian women, Vasanti and Jayamma, in order to better understand what those who inhabit different social and economic strata may think about dignity. Nussbaum uses their responses to spark her "imagination and the emotions" in regards to what it means to live a life with dignity (2000b, 15). For instance, Nussbaum says one can use one's imagination, in light of hearing another's story, of how one would address a given situation, perhaps, a tragic dilemma. Furthermore, Nussbaum uses this method of justification to suggest that her list of capabilities is not merely endorsed by her, but also shared by people who do not share her worldview.

One interviewee, Vasanti, inhabits a good social caste but was subject to domestic violence at the hands of her alcoholic husband. He would eventually leave her, but thankfully her father and brothers have been supportive. She managed to secure a bank loan from the Self-Employed Women's Association, and is now earning a "decent

living”. By contrast, Jayamma struggles to meet her daily subsistence needs. She carries bricks on her head for eight hours per day for very little pay. She lost her husband, but cannot collect a widow’s pension because the government said she has “able-bodied sons” to help her. However, her sons refuse to offer their support. Despite their obvious differences (e.g., class and caste), Nussbaum notes that they are similar in many respects. For example, they live in a society that claims women have the same political equalities as men, but in reality, this is far from the case (Nussbaum 2000b, 20). Furthermore, they suffer from poverty as a result of sex discrimination and both are highly dependent on men for economic independence.

Nussbaum’s (2000b) interviews with these women reveal grave challenges in their lives, and yet, despite these, they still maintain certain aspirations to flourish that are “recognizable across differences of class and context” (31). Even though they never fully articulate what it means to live well, Nussbaum is able to extract values they cherish such as having the ability to politically participate, to develop affiliations, and live a life free from bodily harm. In a footnote to her list of central capabilities, she attributes “discussions with people in India” for helping her place “greater emphasis on bodily integrity and control over one’s environment” (Nussbaum 2000b, 78 n.82). An advantage of the narrative approach as a method of justification is that it first seeks out people who do not share the same worldview as most of Nussbaum’s readers, along with collecting similar data in various cultural contexts, in order to show that despite cross-cultural differences, almost all people around the world share the same basic hunches or intuitions about what it means to live a dignified life. Interestingly, Nussbaum limits her

examination to India although capabilities studies have been employed around the world.¹⁵

The advantage, then, of the narrative approach over crude intuitionism is that the former at least minimally engages others. This, in turn, allows Nussbaum to have a better understanding of a way of life otherwise unfamiliar to her. However, Nussbaum asserts that the narrative approach is “not a method of political justification [...] The ‘narrative method’ is a method of civic education” (2004, 202). That is, it primarily serves as a heuristic device to help those who would otherwise never experience a particular way of life to gain some access into their world. This is far from justifying a theory or list of capabilities. Nussbaum rejects the narrative approach as a primary justification since it merely depends on respondents’ desires and preferences. Preferences may be adapted to unjust social circumstances, and thus, are not reliable materials for theory-construction and defense. So, Nussbaum turns to Rawlsian methods of reflective equilibrium and overlapping consensus as her primary source of justification to demonstrate the cross-cultural validity of the capabilities.

4.3 Rawlsian Methods of Political Justification: Reflective Equilibrium and Overlapping Consensus

In a *Theory of Justice* (1971), Rawls attempts to construct and defend “justice as fairness” as a theory of justice. Justice as fairness is not only political but also moral, of a particular kind, namely, for political and social institutions. In brief, Rawls defends justice as fairness through reflective equilibrium in *Theory*, and later introduces

¹⁵ Solova (2011) has focused her research primarily in Egypt, Simone Cecchini and Francesco Notti (2011) in Latin America and the Caribbean, Sabina Alkire (2002, ch. 7) has studied local projects in Pakistan, and Tania Burchardt and Polly Vizard (2011) apply the capabilities approach to Britain.

overlapping consensus as a justificatory strategy for justice as fairness as a political conception across societies. In *Theory*, he defends this account of justice by showing that its political principles can be acceptable within a liberal pluralistic society.

Rawls offers two principles of justice that serve as a basis for any liberal democratic society. First, each person has equal basic rights, which include freedom from physical assault, liberty of conscience, freedom of speech, the right to hold personal property, etc. The second principle, referred to as the “difference principle,” states that social and economic inequalities are acceptable only insofar as they work out to the least well-off’s advantage. On this model, wealth need not be distributed equally, but inequalities are justified if and only if they help those who are least advantaged (Rawls 1999a, 53).

One may ask how Rawls’s two principles of justice are fair. To this, he provides a hypothetical situation in which an agreement is reached on the principles of justice for the basic institutional structures of a well-ordered society. In the “original position,” rational and mutually disinterested free and equal citizens reach a “valid agreement” on the basic structure of society. Rawls argues that a valid (or fair) agreement is best ensured through the “veil of ignorance”. Individuals behind the veil choosing principles of justice do not know their race, class, sex, geo-political positioning, ethnicity, sexuality, or intelligence. However, they are aware of human motivations and how markets work, in addition to primary goods including a desire to “protect their liberties, widen their opportunities, and enlarge their means for promoting their aims” (Rawls 1999a, 123). Any agreement behind the veil is fair, according to Rawls, since it is made between genuinely free and equal citizens who, due to the veil of ignorance, cannot be influenced by bias toward their

own actual social positions and interests. And, because the parties agree on the principles of justice, the “agreement in the original position specifies the fair terms of social cooperation between citizens regarded as such persons. Hence the name: justice as fairness” (Rawls 2001, 16).

Two questions arise from Rawls’s discussion of justice as fairness and its two principles. First, why should I (an individual) adopt justice as fairness as the correct theory of justice? Second, how can justice as fairness work in a democratic pluralistic society where there are many competing conceptions of the good? These questions are of great significance because their answers reveal Rawls’s justifications, which Nussbaum borrows. Rawls answers the first of these questions in the same way throughout his work, namely, with the coherentist justificatory method of reflective equilibrium. However, the second question is addressed in his later works, beginning with “Justice as Fairness: Political not Metaphysical” (1985). Here, Rawls uses overlapping consensus to show how people with radically different moral and religious comprehensive doctrines can still accept the political principles of justice as fairness. This is significant considering their conceptions may often conflict with the “public political culture,” whereby individuals draw from their comprehensive doctrines to offer reasons in favor of a political conception for their given society (Rawls 2001, 6).

Rawls (1999a) explains that to justify a theory of justice one must give “proof of its principles from premises we both accept” but it is not until “starting points are mutually recognized” that a proof becomes a justification (507). Our intuitive starting points for Rawls are the most “recalcitrant,” to borrow a term from Quine.¹⁶ Rawls maintains that justice as fairness better captures our intuitions of being free and equal

¹⁶ For further discussion of a coherentist method of justification, see W. V. Quine (1951).

than competing theories of justice. In *Theory*, Rawls sets out to defend justice as fairness through a coherentist method of justification which draws heavily on our intuitions, called “reflective equilibrium”.

Reflective equilibrium is a method of justification that attempts to seek coherence between (a) an individual’s considered moral judgments, (b) sets of principles, and (c) background assumptions. The process can be summarized as follows. An individual begins with her “fixed” considered moral judgments, and then uses those intuitions to test a theory, which in turn is used to scrutinize moral judgments.¹⁷ After going back and forth, testing intuitions against one’s background theories and using those theories to check our intuitions, one will hopefully achieve a state that “expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted” (Rawls 1999a, 18). This procedure helps revise one’s intuitions if, for example, they clash strongly with a given theory, or one may endorse a different theory that better captures one’s fixed points.

Rawls answers the first question above, why an individual should adopt justice as fairness, by showing that if some of her judgments are incompatible with the proposed theory (like justice as fairness), she may well revise them. However, if the theory is completely incommensurate with her most fixed intuitions, then she may want to revise the theory or seek a new one. Justice, according to Rawls (1999a), rejects a theory that claims “the loss of freedom for some is made right by a greater good shared by others” (25). Utilitarianism, for example, may demand violating a person’s rights in order to

¹⁷ I am very cautious in using the term “fixed” because Rawls says no intuition is free from scrutiny. To that extent, all of our intuitions are subject to change. Nonetheless, some intuitions are significantly more stable than others. For example, Rawls, drawing on a quote from Abraham Lincoln, says, “If slavery is not wrong, nothing is wrong” (Rawls 2001, 29).

maximize overall utility. In contrast, according to justice as fairness, such violations are unacceptable since all people are entitled to equal basic civil and political rights. So, if a person values basic equal liberties as a “fixed point” then she would likely reject utilitarianism on the grounds that it cannot guarantee these liberties and more likely adopt a conception of justice similar to that of Rawls.

However, “narrow reflective equilibrium” is insufficient since an individual is seeking more than coherence simply amongst her own judgments, but also among the judgments of other people and theories. In attempting to respond to the second question above, how one defends justice as fairness in a democratic society, Rawls suggests seeking “wide reflective equilibrium”.¹⁸ Wide reflective equilibrium considers one’s own judgments, in addition to “alternative conceptions of justice and the force of various arguments for them” (Rawls 2001, 31). Unlike narrow reflective equilibrium, wide reflective equilibrium scrutinizes one’s principles and moral judgments based on a different set of theoretical commitments. For example, a utilitarian may criticize Rawls for appealing to “ordinary moral judgments as a ‘test’ with justificatory force” (Daniels 1996, 4).

If one were to adopt justice as fairness as a theory of justice, one would need to respond to the above criticism. It is beyond the scope of my project to investigate this complex debate, however, for our purposes I want to show how wide reflective equilibrium can be used as a justificatory strategy for society as a whole as opposed to merely an individual. Rawls uses wide reflective equilibrium to show why justice as fairness is superior to utilitarianism, and as I will show later in the section, Nussbaum

¹⁸ Rawls never used the phrase “wide reflective equilibrium” in a *Theory of Justice*. However, Norman Daniels explains that he used the concept “implicitly” in it and explicitly beginning with “The Independence of Moral Theory” (Daniels 1996, 41 n.2).

will draw on this same strategy to argue for the superiority of capabilities over Rawlsian social contract theory.

A well-ordered society is constructed when wide reflective equilibrium has been reached amongst its citizens. Rawls (2001) explains that in this society there is not only a “public point of view from which all citizens can adjudicate their claims, but also this point of view is mutually recognized as affirmed by them all in full reflective equilibrium” (31). The advantage of such a society is that everyone has endorsed the same theory of justice as a regulative measure. Coherence among moral judgments is reached within and between citizens; specifically for Rawls this means justice as fairness would gain public approval.

One problem Rawls saw with grounding justice as fairness in wide reflective equilibrium is the “fact of reasonable pluralism”. People in a liberal pluralistic society may in principle converge on a theory of justice, however, they would do so through radically different comprehensive moral and religious doctrines. If different groups of people accepted a theory of justice, they would do so for very different reasons. A problem with wide reflective equilibrium is that it is (nearly) impossible to achieve because that would require the theory to run through everyone’s comprehensive doctrine. Rawls, in attempting to respond to this concern, re-introduces justice as fairness as a “freestanding” political conception, that is, a theory not dependent on a comprehensive doctrine for its justification.

Rawls develops a new justification (viz., overlapping consensus) to offer a more realistic approach to the fact that reasonable pluralism exists in democratic societies. Overlapping consensus is a convergence on a political conception, specifically for

political purposes, which is compatible with “all the opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society” (Rawls 1985, 225-6). It is a political justification that avoids making metaphysical commitments. Rawls argues that in this sense primacy is given to the political conception over the comprehensive doctrine since we should not seek to “strike a balance” between competing comprehensive doctrines to develop a political conception; instead, the political conception ought to be “defensible in its own right and is such that those who support...that kind of regime can also endorse that conception” (Rawls 2001, 37).

Like reflective equilibrium, there is no guarantee overlapping consensus will be achieved, however, Rawls hopes through time that justice as fairness will become an object of overlapping consensus. Overlapping consensus is like a *modus vivendi* to the extent that people agree on the political conception and tolerate one another, but the former is more choice worthy insofar as a society may have a *modus vivendi* for the wrong reasons (e.g., political authority or group interests). It also has the added advantage of achieving stability over time since people would continue to endorse the theory of justice should the “relative strength of their view in society increase and eventually become dominant” (Rawls 2001, 195).

In sum, Rawls argues that through wide reflective equilibrium one is able to justify a theory of justice individually. However, defending a theory of justice based on wide reflective equilibrium throughout a democratic society is nearly impossible given the fact of pluralism. Thus, Rawls gives precedence to a different justificatory strategy—namely, overlapping consensus. So, while wide reflective equilibrium uses an

individual's political commitments for its justification, overlapping consensus does not, according to Rawls, depend on a political culture for its realization.

4.4 Nussbaum's Use of Reflective Equilibrium

Nussbaum, like Rawls, uses both reflective equilibrium and overlapping consensus to justify the capabilities approach and her list. She believes their combined efforts offer a Rawlsian "holistic justification," one that "looks for reflective equilibrium and uses the idea of overlapping consensus" (Nussbaum 2006, 389). The ultimate goal is to bring one's moral judgments and the capabilities theory into equilibrium, and then show how it can be respected internationally by becoming an object of overlapping consensus from a plurality of religious and cultural worldviews.

Just as Rawls used wide reflective equilibrium to demonstrate the superiority of justice as fairness over utilitarianism, Nussbaum draws on the same strategy to show how the capabilities approach is more choice worthy than competing theories of justice, including utilitarian desire-satisfaction and Rawlsian social-contract theory. Now, I will briefly examine the process of reflective equilibrium and note the advantages capabilities has over competing theories.

Recall that for reflective equilibrium, we start with the most secure of our intuitions, and attempt to seek stability between our judgments and theoretical principles. Consider one of the only examples Nussbaum offers in regards to reflective equilibrium. She says an individual could have a moral judgment that rape and domestic violence harms one's human dignity. Nussbaum does not provide criteria to guide us on which intuitions are worth consulting, except noting the importance of identifying intuitions that

are refined and scrutinized, but we are given no direction as to how to know which intuitions have this status. The goal, then, is to seek coherence between the judgment that rape and domestic violence harms a person's dignity and our basic political principles. Here, one must investigate various theories which maintain that one's human dignity is violated in such cases. One could then make the case in favor of the capabilities approach since the theory, as constructed by Nussbaum, accepts political principles such as each person having a right to live a dignified human life, which is incompatible with rape and domestic violence. Nussbaum notes that a utilitarian desire-satisfaction theorist may not be able to morally condemn such actions since people adapt their preferences to their situations, and thus, a woman may "accept" abuse from her husband.

Once Nussbaum has shown capabilities is superior to utilitarianism, the next "logical step" in attaining reflective equilibrium is to compare capabilities against other strong competing theories of justice. In *Frontiers*, Nussbaum takes the next step by attempting to show that capabilities is more choice-worthy than Rawls's social contract theory in three areas: disabilities (chapters 2 and 3), transnational justice (chapter 4 and 5), and non-human animals (chapter 6). It is beyond the scope of this project to investigate the moral judgments, principles, and background theories, and their interactions towards achieving equilibrium. However, I will briefly describe Nussbaum's argument, in a reflective equilibrium fashion, in favor of capabilities over Rawlsian contractarianism in regards to protecting disabled peoples.

Let's consider briefly Nussbaum's argument for capabilities over Rawlsian contractarianism with respect to disabilities as one example of how she employs reflective equilibrium in defense of capabilities. Rawls and Nussbaum, unlike proponents

of utilitarianism, are committed to the belief that each and every person ought to be given equal basic political rights, including people with disabilities. However, Nussbaum questions the extent to which Rawls is able to fully incorporate people with disabilities, specifically, cognitive disabilities, as a matter of justice. Nussbaum identifies two problems for Rawls. First, he is unable to address the special needs associated with mentally impaired individuals because of their lack of “social productivity” and high “cost”. Second, Nussbaum argues that a deeper problem for Rawls is that his reasonable citizen in a well-ordered society assumes an “idealized picture of moral rationality”. Nussbaum (2006) ultimately agrees with Rawls’s own conclusive dilemma that either people with cognitive disabilities do not present “issues of justice, or we should say that justice as fairness does not offer a complete account of social justice, and we should figure out what we would need to alter in order to make the theory capable of going further” (135).

Nussbaum attempts to answer Rawls’s challenge with the capabilities approach. As I mentioned above, she says each and every person ought to be given the opportunity to live a dignified human life. Thus even people with cognitive disabilities ought to be given the opportunity to live such a life. Nussbaum believes this is an intuition shared by nearly everyone. And if we want a theory that best coheres with our intuitions that still achieves justice, then capabilities is superior to Rawlsian social contract theory. Even though Rawls’s theory is one of justice, it does not mesh well with our intuitions insofar as it does not provide everyone an opportunity to live a dignified human life; Nussbaum claims that on Rawls’s model, cognitively disabled individuals are not afforded the same citizenship status in virtue of their lack of full rational capacity. For this reason,

Nussbaum attempts to show how capabilities is more in line with our intuitions about cognitively disabled persons by bringing into equilibrium our intuitions with the capabilities since Rawls's theory maintains a narrow conception of rationality and thus has difficulty including the cognitively disabled as full persons worthy of justice.

In order to achieve political equality, each and every citizen must be given the opportunity to acquire all central capabilities relevant to this task. An individual with a cognitive disability will likely have a more difficult time acquiring certain capabilities, but Nussbaum, unlike Rawls, claims justice demands that all the necessary resources be given to ensure their realization. Nussbaum explains that, for Rawls, a necessary condition of being granted the status of full personhood is rationality. However, cognitively-disabled persons are not fully rational. Because they are not full persons on the Rawlsian model in any obvious manner, he cannot grant them political equality. To address this concern, Nussbaum parts ways with Rawls by not grounding her conception of justice in an idealized version of rationality. The advantage of not doing so is that all citizens, irrespective of their mental faculties, have the opportunity to "develop the full range of human powers, at whatever level their conditions allows, and to enjoy the sort of liberty and independence their condition allows" (Nussbaum 2006, 218).

Nussbaum's argument here relies on intuitions about human nature, agency, and dignity that she claims better match the capabilities approach than Rawlsian contractarianism. The version of capabilities espoused by Nussbaum maintains that dignity ought to be extended to each and every person regardless of their intelligence. A person's dignity is connected with her opportunity to fulfill certain capabilities up to an adequate threshold level. Given Nussbaum's egalitarian commitment to dignity, she

claims Sesha, Eva Kittay's cognitively-disabled daughter, has an equal opportunity to possess the central capabilities on her list.

However, not everyone shares the same intuitions as Nussbaum. Eva Kittay, for instance, questions Nussbaum's conception of dignity. Kittay (2005) suggests that we should "not look for the basis of dignity in attributions we have as individuals, but in the relationships we bear to one another" (111). Dignity then is wrapped up in our connections with others and not based on an individual's opportunities to pursue certain capabilities. Kittay (2005), in her conclusion, claims that the "source for the claim to equal human dignity" should be found in our "common connections to others in our need for care, in our dependency and vulnerability and in the worth actualized when other beings with intrinsic worth devote themselves to our well-being" (118).

I draw on Kittay to illustrate that Nussbaum's intuitions are certainly not shared amongst everyone. She can claim her intuitions are "widespread" or in agreement with "most people," but empirically this seems false; at the very least, she has not demonstrated this to be the case. The fact that Nussbaum's intuitions are not as widely shared as she proclaims not only reveals a problem for addressing those with cognitive disabilities, but also raises greater concerns over the capabilities list in general. Intuitions are the basis for reflective equilibrium. The most troubling aspect of drawing heavily on her own intuitions is that Nussbaum uses reflective equilibrium to justify both the capabilities approach over competing theories of justice and specific items on the list in hopes that they can become an object of overlapping consensus. So, the claim to use intuitions that are shared by nearly everyone without demonstrating that they are in fact shared at least by many calls Nussbaum's defense of the capabilities and theory itself into

question because it ultimately rests on an implicit, uncritical endorsement of her own values and intuitions under the guise of having been widely vetted. I will return to this problem in the next chapter.

To summarize thus far, Nussbaum's capabilities approach is a theory of justice that is supposed to (1) cohere with our intuition that each and every citizen ought to be given the opportunity to live a dignified human life and that (2) maintains that each person be granted equal political and civil liberties. One could accept (1) and deny (2), if one rejected Nussbaum's assumed moral egalitarianism, that is, each and every person ought to have an opportunity to secure the central capabilities from her list up to an adequate threshold level. This is significant because one could, in principle, embrace her conception of dignity, but not extend it to everyone in the same manner as in a Utilitarian theory.

Both of the above two points corresponds to the Rawlsian type of reflective equilibrium.¹⁹ Because the set of principles that define capabilities coheres with "our" intuitions, "we" are able to achieve narrow reflective equilibrium. However, Nussbaum follows Rawls in noting that our goal is not simply narrow reflective equilibrium, but rather wide reflective equilibrium. Thus, by testing the capabilities against other theories

¹⁹ However, it is worth mentioning a difference between Rawls and Nussbaum in regards to reflective equilibrium. Nussbaum, unlike Rawls, offers an intuitive argument on the nature of a good outcome, and the outcome itself defines what is just. Since Nussbaum's list is produced out of the intuitive idea of living a truly dignified life, justice entails each and every citizen having the opportunity to exercise the central capabilities up to an adequate threshold level. Political procedures for Nussbaum are only adopted if they confirm this outcome. In other words, the procedure is only valuable insofar as it produces the outcome that justice demands. For example, if a procedure did not find the capability of "practical reason" (or any of the other central capability) valuable, then the procedure itself would have to be rejected because it did not yield a just outcome. So justice, according to Nussbaum, is the outcome, and the procedure is good only to the extent that it realizes this outcome. Rawls, on the other hand, would privilege the procedure that begins with the original position and constructs his two principles of justice in hopes of achieving a just outcome. Nussbaum criticizes Rawls because regardless of how well the procedure is constructed, there is no guarantee that it will achieve a just outcome.

of political justice, including utilitarianism and social contract theory, and concluding the superiority of capabilities, “we” are closer to achieving wide reflective equilibrium because we have shown that the capabilities approach not only meshes with our considered judgments, but does so better than competing theories of justice.

4.5 Nussbaum’s Overlapping Consensus

The second method Nussbaum uses to justify capabilities is 'overlapping consensus'. Nussbaum never explicitly discusses the relationship between overlapping consensus and reflective equilibrium. However, because she is drawing directly from Rawls, it seems fair to say that she would adopt overlapping consensus in the same way. This is suggested when she says that capabilities “offers a good basis for political principles in a pluralistic society, by demonstrating that it could, over time, become the basis for an ‘overlapping consensus’ among holders of the main religious and secular views” (Nussbaum 2011b, 79). Like Rawls, she seems to recognize that it would be nearly impossible to achieve wide reflective equilibrium between all citizens within a democratic society given their incommensurable comprehensive doctrines.

Recall that overlapping consensus is achieved when reasonable citizens are able to agree on a theory of justice that is compatible with many reasonable comprehensive moral and religious doctrines. A 'reasonable citizen' is someone who may not choose to fulfill a right, but, based on liberal principles, accepts that everyone ought to be afforded that given right. For example, Nussbaum explains that the Amish choose not to exercise their right to vote; however, they can still accept that everyone ought to be given the right to vote. The goal of overlapping consensus is to reach a valid consensus. Valid consensus

occurs when citizens can accept a political doctrine consistent with their own comprehensive doctrine. An illegitimate consensus occurs when it appears that everyone accepts a political doctrine, but in fact they only do so because they are forced or coerced into consenting.

Nussbaum's capabilities theory is a political doctrine that can be justified through overlapping consensus since it is a freestanding partial conception of justice. Unlike Rawls, whose theory of justice is wedded to a public political culture of a pluralistic democratic society, Nussbaum offers capabilities as a partial theory of global justice. For Nussbaum, justification requires the theory be "an idea of acceptability to all or at least to the major conceptions of value" (Nussbaum 2006, 163). There are two reasons agreement is significant—namely, respect and stability. More respect is given to a doctrine that has been subscribed to by (nearly) everyone as opposed to one that has very little support. Nussbaum acknowledges that overlapping consensus of capabilities has not yet been achieved, but hopefully over time it can be an idea acceptable to all. So, Nussbaum advocates for a weaker form of overlapping consensus, which claims that we need only imagine its realization over time. She argues that this form of overlapping consensus is plausible because capabilities begins with an intuitive conception that everyone deserves a dignified life, which has cross-cultural appeal.

Overlapping consensus, as mentioned above, also has the advantage of providing "stability" for capabilities in a way reflective equilibrium does not. If there is a single list that achieves consensus, then identifying harms and offering solutions to them will be more uniform. In this manner, Nussbaum constructs a theory that is more ambitious than Rawls since she hopes to achieve overlapping consensus on the list in order to provide a

basis for international action. For example, it can be used as a “set of goals for cooperative international action and a set of commitments that each nation holds itself to for its own people” (Nussbaum 2000b, 104). One should not mistake this to mean that if the capabilities from her list are not being realized in a given state, then intervention is demanded. Nussbaum makes an explicit distinction between “justification” and “implementation”. We ought to justify the list as a foundation for constitutions around the world, but this does not mandate intervention if a nation does not recognize a central capability. Military and economic sanctions, according to Nussbaum, should only be implemented in the most severe cases. Those who find the list to be necessary ought to engage in “persuasion,” not intervention.

There is a bigger difference between Nussbaum and Rawls that is worth discussing a bit. Rawls, in *Law of Peoples*, sets out to show “how a world Society of liberal and decent Peoples might be possible” (6). He hopes to accomplish this by having both agree on his conception of justice. Nussbaum, on the other hand, offers a universal standard for all people, which seems sympathetic to cosmopolitanism. She is aware of this reading, but outright rejects the label because cosmopolitanism is a comprehensive doctrine that prioritizes humanity as a whole whereas the capabilities approach is a political doctrine. Nussbaum, however, admits that it could “probably accept most of what I recommend” (2011, 93). I draw the distinction between Rawls and Nussbaum to show that despite relying on Rawlsian inspired methods to defend capabilities, she is ultimately engaging in a fundamentally different project.

This section explicated Nussbaum’s justificatory strategies to ground capabilities. In doing so, she draws primarily on Rawls. However, because she does not offer an in-

depth account of either reflective equilibrium or overlapping consensus, but calls her approach “Rawlsian,” I used Rawls to fill the necessary gaps while also identifying their divergences. Nussbaum, in a reflective equilibrium manner, argues that the theoretical principles of the capabilities approach better cohere with our considered judgments and interrogation of background assumptions than Rawlsian or utilitarian justice. To that extent, she argues that we ought to endorse capabilities as our theory of justice. However, it is very difficult (if not impossible) to achieve wide reflective equilibrium in a democratic state given the fact that capabilities, as a theory of justice, would be justified from one’s own particular worldview. Thus, Nussbaum hopes capabilities as a freestanding political conception of justice and her list can over time become an object of overlapping consensus for everyone in the world and not merely those who inhabit liberal democratic societies.

5. Conclusion

This chapter has attempted to provide a comprehensive account of Martha Nussbaum’s capabilities approach. It began with an Aristotelian framework of internalist essentialism to construct and defend a list of basic functions that constitutes a truly human life. I call this the flourishing version of capabilities because it represents an account of the good life, what Nussbaum calls a “thick vague theory of the good”. The problem with the flourishing version is its inability to accommodate religious and ethical pluralism. Democratic societies have many competing conceptions of the good life, therefore Nussbaum needed a framework for capabilities that is compatible with many worldviews, unlike Aristotelian internalist essentialism.

Nussbaum addresses the problem of pluralism by adopting political liberalism as a new framework. Political liberalism begins with the commitment that free and equal citizens are able to pursue their own conception of the good. However, not just any conception will suffice. Thus, Nussbaum constructs a revised list of capabilities based on a life worthy of dignity. The dignity version of capabilities, as I call it, better accommodates pluralism than the flourishing version since the former does not provide an account of flourishing, but more vaguely, a life compatible with dignity. Indeed, Nussbaum argues that this account can be extended to include justice for nonhuman animals and cognitively disabled peoples.

Nussbaum's revised list of ten central capabilities, which has changed slightly from her flourishing version, is constructed by imagining a life without one of the central capabilities. Nussbaum says a life worthy of dignity entails the opportunity to exercise all ten central capabilities up to an adequate threshold level. However, if an individual is forced to choose between central capabilities she faces a tragic dilemma. Nussbaum advocates for ingenuity and effort to alleviate such choices; however, not all tragic dilemmas can be alleviated, and not for lack of effort.

Finally, I argued that while an imaginative exercise is an acceptable starting point for developing a list of capabilities, it cannot ground them in a way that has universal appeal. Drawing on Rawls, Nussbaum offers two primary justifications for capabilities—reflective equilibrium and overlapping consensus—to offer universal validity to her theory. First, reflective equilibrium is an individual endeavor to bring one's moral judgments into coherence with the capabilities approach, which helps identify the advantages of capabilities over competing theories of justice such as utilitarianism and

Rawlsian contractarian theory. However, wide reflective equilibrium has its limitations in trying to ground a theory of justice in a society with reasonable pluralism. To answer this challenge, overlapping consensus offers a justification for a democratic society by showing that capabilities as a freestanding partial conception of justice can be accepted by those with otherwise different worldviews. If valid consensus on a public political conception is achieved, it gives great indication that the capabilities approach and list are respected and offer stability for the international community.

In order to realize stability, however, Nussbaum must show which comprehensive doctrines are “reasonable” and, equally important, which citizens are “reasonable” enough to contribute to the capabilities list. It is not all that clear whose comprehensive doctrines are worthy of consideration. I fear that those who do not share the same enthusiasm for Nussbaum’s list may not be given genuine consideration because they may easily be dismissed as being wedded to an unreasonable comprehensive doctrine or may be considered unreasonable for an unwillingness to accept her ten central capabilities. I do not believe these risks mean it is impossible to achieve genuine universal justification for the capabilities approach or the list. However, we must ensure sufficient mechanisms are in place to allow the list to be truly considered “ours” under a much wider scope for that term. Justification requires acceptance in order for the list to have moral and political authority. Furthermore, I fear some of the similar concerns that raise questions about her use of overlapping consensus can also be charged to her appropriation of reflective equilibrium; for example, her justification for the list of capabilities may run the risk of smuggling her own values and beliefs.

The following chapter will draw from primarily feminist philosophers, including Brooke Ackerly, Susan Moller Okin, Alison Jaggar, Nkiru Nzegwu, and Ingrid Robeyns, who scrutinize Nussbaum's method for constructing and defending her list of capabilities. Specifically, I build on the work of these theorists to show how Nussbaum's intuitions have not gained as much cross-cultural support as she maintains, which subsequently calls her list into question. In order to mitigate the problem of presenting one's values as universal, I present Robeyns's four guidelines for generating and defending a list, in addition to four methodological criteria that I offer. I suggest that this critical assessment of Nussbaum's approach calls for a different justificatory strategy to defend the universal validity of the capabilities theory.

CHAPTER TWO: FEMINIST CRITICISMS OF NUSSBAUM'S CAPABILITIES

With the capabilities theory, Martha Nussbaum seeks to develop and defend a global ethic that pays special attention to gender-specific injustices. She offers four methods of justification—internalist essentialism, narrative approach, reflective equilibrium, and overlapping consensus—to defend her specific list of central capabilities as a cross-culturally valid standard of justice.²⁰ In this chapter, I evaluate the success of Nussbaum's methods of justification by drawing on the work of four feminist critics—Brooke Ackerly, Susan Moller Okin, Nkiru Nzegwu, and Alison Jaggar. These critics reveal that Nussbaum fails on both accounts, that is, that Nussbaum's list does not gain the cross-cultural validity she claims for it, and that her list of central capabilities fails to properly identify gender-injustices. Building on the work of these theorists, I discern three general flaws with Nussbaum's methods of justification—namely, that she (1) uncritically imports her own values into her theory without having a procedure to either prevent this from occurring or recognizing when it happens, (2) arbitrarily selects the intuitions and perspectives of others to “confirm” aspects of her theory, and (3) neglects significant power dynamics that influence her interactions with others.

I argue at the end of the chapter that one reason Nussbaum fails to achieve her two goals is due to her methodological commitment to monological moral reasoning. Here, an individual constructs and defends her theory from merely her own perspective, and monological moral reasoning can occur even when someone claims to consider the

²⁰ For our purpose, I will use the term “method” to refer to methods used to justify her theory (e.g., reflective equilibrium and overlapping consensus), as opposed to “methodology,” which discusses how well a theorizer attempts to justify her theory. For instance, I examine the following three methodological concerns, namely, importing values, arbitrarily selecting others to confirm aspects of one's own theory, and neglecting power dynamics between relevant parties. The success of a theorizer's methodology will be measured by how well it is able to realize her method in a way that satisfies her theoretical and political commitments.

viewpoints of others. One concern with reasoning monologically is that it runs the risk of being unable to account for harmful implicit biases and prejudices. I suggest that a possible way to address the concern of implicit bias would include adopting a dialogical, as opposed to monological, account of moral reasoning as the basis for a method of justifying the capabilities. This would require that a theorizer critically engage others through actual dialogue while constructing and defending a theory.

I've organized the feminist criticisms of Nussbaum and my elaboration of them around the three flaws mentioned above. Not all three flaws are necessarily found in each of the four justificatory strategies Nussbaum uses, but it is likely that each method of justification is subject to more than one flaw, especially because we will see they are intimately connected. Taken together these three flaws will illustrate a deeper concern with Nussbaum's method of justification, which in turn will call for the need to replace it with a different methodology.

1. Flaw #1: Importing Values

Importing one's own moral and political values into one's own moral or political theory is not itself harmful and does not necessarily de-legitimize the theory's broader validity. It may be the case that a theorizer has a very good argument for the values she posits. However, we should question a theorizer who imports values into a theory and then dismisses out of hand those who do not share those values, or at the very least, does not critically engage perspectives that challenge her own. Several critics of Nussbaum's capabilities approach argue that she is guilty of this charge throughout her works—from

her earliest method of justification (viz., internalist essentialism) to her latest defense of reflective equilibrium.

1.1 Importing Values in Internalist Essentialism

In her book, *Political Theory and Feminist Social Criticism*, Brooke Ackerly carefully examines Nussbaum's articulation and defense of the capabilities using the Aristotelian method of internalist essentialism. Recall that internalist essentialism examines different cultural myths and beliefs in hopes of achieving a cross-cultural list of capabilities, or what Nussbaum calls a cross-cultural list of "spheres of experience". Ackerly situates Nussbaum as a social critic who offers a list of capabilities for public policy makers as Nussbaum navigates the space between essentialism, values that are shared cross-culturally, and relativism, where local communities have the opportunity to interpret and manifest those values contextually. Drawing on internalist essentialism, Nussbaum will confront a potential incommensurability between her own values and other conceptions of the good being examined. Ackerly (2000) criticizes Nussbaum's method of justification because, as she puts it, it

allows her to import her own values into her analysis of practices unfamiliar to her by inadvertently attributing to the essential list characteristics that are familiar to her through her own society's means of promoting basic capabilities (107).

As a social critic, Nussbaum must be careful not to ignore particular worldviews simply because they are radically different from her own beliefs and practices, but she likewise cannot simply embrace another community's way of life simply because that group of people claim it as praiseworthy. She attempts to address this tension by interpreting others' worldviews and, if they challenge her list, then Nussbaum must decide which

capabilities are worth preserving and which ones must be jettisoned. Ackerly argues, however, that this justificatory strategy offers no fair way to adjudicate between conflicting values and so allows Nussbaum to import those values most familiar to her without facing criticism.

There is strong textual support in favor of Ackerly's criticism. For instance, Nussbaum believes a basic good that must be guaranteed to all is "education". One aspect of education that Nussbaum has touted is literacy, especially since it promotes the same opportunities for women as their male counterparts. Ackerly calls Nussbaum's conflation of education and literacy into question, and subsequently, the value of education as it is commonly understood in the West. Ackerly (2000) argues that economic flourishing, autonomy, and self-respect, the values Nussbaum believes have the potential to be realized through literacy, have "significantly different meanings...in the context of poor rural Bangladesh" than in Nussbaum's Western, academic context (108). Ackerly doesn't mean to claim the Bangladeshi women do not value education categorically, but rather to challenge a narrow understanding of education defined simply as literacy. In fact, they are certainly aware of the potential benefits education may bring to their families.

Ackerly's criticism is not merely a semantic quibble over the definition of education. Nussbaum states repeatedly that her capabilities are vague enough to be multiply realized. However, she would not accept all interpretations or realizations since a capability could conceptually be understood in a way that is incompatible with her understanding of dignity. For instance, in the context of a food desert, people have access to high calorie foods thereby seemingly satisfying the capability of access to food, but they are unlikely to have access to healthy, affordable food, which is necessary to realize

the capability that access to food is attempting to promote. A threshold would need to be set high enough to allow an individual to have access not to food per se, but to nutritious and cost-effective food. Thus, Nussbaum needs to defend a more substantive interpretation of central capabilities to avoid generating such an abstract list that its respective interpretations are so vast as to render the capabilities vacuous. This becomes significant for our purposes since Nussbaum must demonstrate what the best interpretations are and then offer a fair process to adjudicate between conflicting beliefs. As it stands, Nussbaum simply offers her own interpretations of each of the capabilities from the list without argumentation.

Let's again consider the capability of education to understand how Nussbaum uncritically imports values into the list. Nussbaum attributes the problem of illiteracy in Bangladesh to a lack of understanding of, and appreciation for, the value of education. She says that Bangladeshi women, specifically, "may not even know what it means to have the advantages of education" (Nussbaum 1995b, 91). Ackerly is very skeptical that Bangladeshi women do not grasp the value of education. She writes, "having spoken with over 800 rural Bangladeshi women... I am confident that adult rural Bangladeshi women are aware of the value of education, generally, but consider their own education irrelevant now that they have children" (Ackerly 2000, 107).

Rather than failing to understand the potential benefits education may have for one's child, Ackerly suggests that Bangladeshi parents are in a tragic dilemma of being forced to choose between realizing one of two central capabilities. Here, the situation is tragic since all people should have the opportunity to secure each of the ten central capabilities from Nussbaum's list. Education in rural Bangladesh is very expensive since

children need school supplies and tutors, for example, to pass their grade and parents often do not have the financial support to pay for these expenses. Parents realize that education is an “investment” for their children, but an expensive one. The investment is more often than not too much considering the alternative is immediate work, which ultimately helps provide an income (and nourishment) for one’s family. So Nussbaum’s understanding of the situation—that these women are illiterate because they do not value education—is, if Ackerly is correct, a serious misunderstanding.

Nussbaum has a particular understanding of education, and when she applies her understanding of the term to an unfamiliar context, serious interpretive and practical concerns arise. Given high illiteracy rates in Bangladesh, Nussbaum concludes wrongly that Bangladeshi people do not value education. Furthermore, because Nussbaum supposes Bangladeshi people are misinformed in regards to their lack of appreciation for education, she does not take their position as a genuine challenge to her list based on Bangladeshi reasons for not pursuing the type of education that Nussbaum endorses. Specifically, they challenge her list insofar as Nussbaum wrongly believes that “literacy promotes women’s economic flourishing, autonomy, and self-respect”, when in fact Ackerly maintains that these cannot be achieved in the same manner for Bangladeshi women since flourishing, autonomy, and self-respect do not have the same meaning (Ackerly 2000, 107). So, Nussbaum imports her liberal interpretations of autonomy, for instance, into her account of education.

I have two general concerns, drawing from Ackerly, with Nussbaum’s use of internalist essentialism as it pertains to education. First, Nussbaum presumes to know what Bangladeshi women mean by education, which is shaped by her commitment to the

liberal, autonomous self. That is, as long as a person is not being physically impeded from receiving an education, she can choose to value education by attending school. So Nussbaum (1995b) concludes that Bangladeshi women “may not even know what it means to have the advantages of education” (91). Moreover, their actual interpretation of education seems irrelevant to Nussbaum since she does not seem open to considering whether their views present a real substantive challenge to her account. Nussbaum ultimately misinterprets the Bangladeshi perspective on why they tend not to educate their children despite its benefits. Because she believes Bangladeshi parents do not find value in education, she not only misunderstands their position, but she also fails to perceive that they face a tragic dilemma. This is especially problematic for Nussbaum since a goal of hers is to identify tragic dilemmas in hopes of alleviating them as quickly as possible.

Second, Nussbaum uses the misinterpretation to discredit the Bangladeshi perspective as one not worth taking seriously as a potential challenge to her interpretation of certain capabilities. For example, one way in which they challenge Nussbaum’s list is through their commitment to different meanings of autonomy and self-respect. They do not believe the self is simply understood as an autonomous agent who places value on a capability based on whether one chooses to fulfill it. Rather, I follow Ackerly’s assessment that “adult rural Bangladeshi women are aware of the value of education, generally, but consider their own education irrelevant now that they have children” (107). A Bangladeshi woman then would not see her decision to pursue education as one that could be made on her own, but wrapped up in her family writ large. Because she understands her identity as constituted through her loved ones, she could not make the

determination to receive an education (despite her commitment to do so) without considering other factors, such as harming her children's future.

These are cornerstone values for Nussbaum, and even influence her account of education insofar as they constitute elements of literacy. However, Ackerly has shown that autonomy and self-respect mean something very different in Bangladesh than many Western contexts, and thus pose a challenge to Nussbaum's account of literacy and subsequently education. I find this deeply problematic because it allows her to import her own values without being truly challenged. In other words, if all challenges to Nussbaum's list are constructed by Nussbaum as misinformed or as lacking full appreciation for her central capabilities, then she has unilaterally asserted, almost in an *a priori* way, a universal endorsement of her list.

Nussbaum is certainly aware of the concern that the influence of a person's culture on her moral reasoning may impede her ability to generate a list of universal moral values. She criticizes Aristotle for being a victim of his own culture since he claims only *citizens* are entitled to specific opportunities as a matter of justice, and not all persons (women, for example) were considered citizens. Nussbaum attributes this to the strong "sexual prejudice" of his day (quoted in Ackerly 2000, 104). To address this problem, Nussbaum asks us to preserve Aristotle's general method of internalist essentialism, while not being subject to cultural bias in the way he was influenced. Nussbaum seems fairly confident that we should be able to employ the method better than Aristotle did, in a way that is more critical of our own potential cultural biases.

Ackerly contends that Nussbaum's criticism of Aristotle is actually much deeper than Nussbaum maintains. We cannot simply ignore the cultural beliefs and practices that

we hold closest to us. It is the method itself that concerns Ackerly, not its poor use.

Ackerly (2000) explains that “Nussbaum’s argument furthers her criticism of Aristotle’s application of his method, but goes no further toward restoring confidence in the method” (104). A missing step in Nussbaum’s methodology is a way to check our own biases, which is necessary in order to avoid claiming a value as universal and yet interpreting it so narrowly that it is merely representative of one’s own culture. So, just as Aristotle’s method imports values associated with only the lives of male citizens while supposedly seeking essentially human functions, Nussbaum’s method “allows her to import into her definition of an essential human life the liberal values of autonomy and independence that may be more culturally specific than she treats them” (Ackerly 2000, 105).

As we have seen, Nussbaum uses internalist essentialism to justify the flourishing version of capabilities, but she has since abandoned this version in favor of the dignity version. One method Nussbaum offers to generate and defend her list for the dignity version is reflective equilibrium. However, as I will show, this problem of uncritically and covertly importing values that troubles her early method of justification also applies to this later method.

1.2 Importing Values in Reflective Equilibrium

Nussbaum’s position of power as a Western academic and theorizer, in addition to the arbitrary manner in which she selects competing theories to shed light on her list, has allowed her to uncritically import liberal values into her dignity version of the capabilities and to avoid subjecting the theory to genuine scrutiny. Recall that reflective equilibrium for Nussbaum begins with an individual pondering what is implicit in the

notion of dignity. She then seeks to achieve equilibrium between her moral judgments on dignity, background assumptions, and theoretical commitments. Furthermore, since Nussbaum is committed to wide (rather than simply narrow) equilibrium, she must elicit challenges to better assure herself that the equilibrium is trustworthy. So in some sense her version of reflective equilibrium takes on a “dialogue”-like form. However, this “dialogue” is not really a dialogue where an individual discusses a subject with an actual interlocutor. Instead, Nussbaum claims to “engage” other worldviews (not any specific person). This is problematic since she never says what she in fact means by “engage other worldviews”. She might simply ponder from her armchair how others would respond to her list or research extensively on how they would challenge her perspective. Regardless, we are not afforded the details of her engagement.

As I noted earlier, Nussbaum argues that the items on her list offer everyone the power to challenge her perspective and give marginalized voices the opportunity to speak. To some extent, this is certainly true since the capabilities of bodily integrity, affiliation, and control over one’s environment, among others, are necessary preconditions for a person to have a genuine opportunity to share one’s worldview and challenge others—to speak and be heard. However, a deeper concern is that Nussbaum defends her list of capabilities as compatible with “our” intuitions of what it means to live a life compatible with human dignity, and yet presents virtually no serious challenges to any of the capabilities.

I am not wholeheartedly against her list of capabilities (in fact, I am quite sympathetic to many of them), and it is not obvious that any of the feminist critics from this chapter would deny the value of Nussbaum’s list, but if Nussbaum wants to achieve

cross-cultural support for her list then she must take her critics seriously. This will include critically engaging them at multiple levels. In terms of reflective equilibrium, she must engage more than simply her account of human dignity since other perspectives may yield a different list of capabilities or, perhaps, a different interpretation of a given capability from her own. I have already discussed the trouble with espousing the capability of education and its particular manifestation, however, there are certainly other capabilities that are subject to the same concern. For example, Nussbaum interprets the capability of bodily integrity to include an absolute prohibition on female genital circumcision (FGC). However, as I noted in Chapter 1, Theresa Tobin has argued that because FGC cannot be captured by a single procedure, event, or ceremony, but rather has multiple meanings in different communities, to simply assert that “this” practice is an obvious violation of bodily integrity from the outset fails to consider perspectives of women in communities who practice and themselves endorse some version of FGC. That is, Nussbaum automatically dismisses the views of women who might challenge the idea that bodily integrity and FGC are in some sense compatible in part because the theory yields an oversimplification of a set of practices that have different physical manifestations and different cultural and social meanings in different places.

Furthermore, because Nussbaum’s version of reflective equilibrium is Socratic in nature, she must also engage others who do not share her worldview and then either show why her list is superior to competing versions or amend her list accordingly. If she continues to ignore other perspectives, then she is merely constructing a Nussbaumian ethic cloaked under the guise of a global ethic that pays special attention to the way in which marginalized voices (especially women) suffer injustice. Until a genuine effort is

made by Nussbaum to take critics seriously, then she will continue to suffer from the criticism that she imports liberal values into her theory (including her list) without adequate defense.

2. Flaw #2: Arbitrary Selection of Others

Nussbaum's covert importation of liberal values is not rooted in a failure to "consider" other perspectives, but a failure to provide any mechanism for taking other perspectives seriously as potentially offering a substantive challenge to her theory. A related problem has to do not only with how she engages, or fails adequately to engage others, but also with whom she engages. In her early works, Nussbaum draws on unfamiliar cultural myths and practices (that is, unfamiliar to "Western" liberal perspectives) to demonstrate that certain "experiences" are shared amongst different cultures. Her later works appeal to intuitions, including the intuitions of diversely situated others, about what constitutes a dignified human life. Regardless of Nussbaum's method of justification, the way in which she selects others to confirm aspects of her theory appears rather arbitrary. That is, she offers no method for how to select perspectives to determine whether or not their position confirms her own values or challenges them; furthermore, if perspectives conflict with her own, Nussbaum offers no adjudicating method to show that her position is superior. This concern is not unique to a specific time period, but has plagued all four major methods of justification.

2.1 Arbitrary Selection of Other Perspectives in Internalist Essentialism

Internalist essentialism evaluates what it means to be truly human by examining various cultural myths and stories. Nussbaum uses this method to identify capabilities shared amongst different cultures. One of the main features of this method demands checking our beliefs and practices against beliefs and practices of other cultures, although how she secures perspectives other than her own is highly questionable. If she is the sole interpreter of cultural myths and stories, including her own and others, and the sole arbiter of which stories are worth consulting, then it is not clear she has a reliable guide to establish that she has genuinely considered other perspectives.

Nussbaum asserts that we need to be selective in the perspectives we seek out. We are not bound to consult all unfamiliar perspectives, and we are obligated not to consider those likely to be mistaken or corrupt. In fact, Nussbaum says that to build a theory on such perspectives would be putting the “political conception, and the liberties of citizens, on much too fragile of a foundation” (Nussbaum 2000b, 160). In other words, she fears that if the capabilities are formed on these views, then they will be unable to identify accurately how well one is living since corrupt intuitions may, for instance, find certain unjust sexist and racist beliefs and practices permissible.

However, being too highly selective in regard to which views to consider for our theory is problematic for two reasons. First, high selectivity may lead to a bias “toward what is familiar to those doing the inquiry”, mistaking what is unfamiliar with what is corrupt or false (Ackerly 2000, 102). Nussbaum must provide a principled way to identify which intuitions are mistaken or corrupt from those that are merely unfamiliar; we cannot simply accept her word. Second, and more troubling, even if she had a non-arbitrary method to identify corrupt views, there might be good reason to preserve aspects

of them anyway. Corrupt and mistaken desires may actually add to the discussion at hand. An individual may be mistaken about a given topic, but have insights either directly related to the discussion or on a related matter that are worth considering.

Nussbaum is aware of the fact that, to some degree, we are all limited by our culture. This places her in a very difficult position. On the one hand, if she does not welcome all myths and stories as legitimate forms of information to shape her theory, then she runs the risk of being exclusionary to the point of merely reinforcing her own views. On the other, if she welcomes multiple perspectives, then she needs to offer some way to determine which values prevail when competing viewpoints clash. Nussbaum claims to address the above dilemma by paying sufficient attention to cultural beliefs and practices that are different from hers. She insists repeatedly that her list is highly abstract and general, which allows local communities to realize capabilities in their own way. She writes, “for sometimes what is a good way of promoting education in one part of the world will be completely ineffectual in another” (Nussbaum 1995b, 94). In other words, while the capability of education is a value for Nussbaum that should be promoted everywhere, how it is interpreted (e.g., compulsory or otherwise) and implemented can vary greatly.

However, allowing various interpretations does not in fact answer Ackerly’s criticism, which is that Nussbaum fails to accept divergent perspectives to shape the content of the list and provide a process for selecting viewpoints other than her own to determine which capabilities are truly shared cross-culturally. The way in which particular capabilities are interpreted will greatly impact whether or not they truly represent a dignified life for all human beings, or simply a (privileged) few, which will

therefore bear on whether or not they are truly cross-culturally shared. Since Nussbaum's interpretation of "education" necessarily entails literacy, she must answer the challenge that she is not simply importing her own conception of education. In other words, she must demonstrate that her account of education is not simply a Western construct being imposed across the globe, and if her interpretation of education as literacy is best, then the burden is on her to show why it is superior to other conceptions.

To see the force behind this critique, let's consider Nkiru Nzegwu's criticism of education as a viable capability, particularly, its promotion of literacy. Nzegwu is writing as a post-colonial theorist, who argues in favor of indigenous women's (not human) development. Arguing from the perspective of both pre- and post-colonial Igbo culture, she explains that a push for literacy was deeply connected with the advent of colonialism, which is why the concept of "education" needs to be situated within the "politics" and "power" surrounding its use.

Following D.P. Pattanayak, Nzegwu explains that illiteracy is often associated with poverty, being uneducated, and being malnourished; meanwhile, literacy is often grouped with productivity and the advancement of civilization.²¹ On this view, literacy is the "panacea for successful development even as research shows that the correlation between literacy and the adoption of improved agricultural practices is insignificant" (Nzegwu 1995, 453).²² To accept literacy as an obvious good for resolving so-called third world "problems" runs the risk of also labeling indigenous peoples as "backwards" and duped by their cultures. One of the most troubling aspects of adopting this attitude is that

²¹ For an in-depth analysis of the way intersections between literacy, oppression, and colonialism, see Pattanayek (1991).

²² Nzegwu cites Shanker (1979) for the research showing a lack of correlation between literacy and the adoption of improved agricultural practices.

the theorizer lacks epistemic humility, which is especially important when constructing a global ethic since we are limited by our geo-political position. So, given the colonial push for literacy, in addition to their continuing tendencies to evaluate so-called third world peoples' lag in development as rooted in backward practices of indigenous cultures irrationally wed to traditional ways of life, and the empirical evidence calling the benefits of literacy to improve conditions of poverty into question, it is not unreasonable for someone to be suspicious of the capability of education depending on its context.

Nzegwu is careful not to romanticize pre-colonial life, and acknowledges that in the current world literacy is often vital, but it must be placed in its proper context. For example, development practitioners need to account for “diverse character traits of different groups of women, and to be open and receptive to alternative models of experiences and organizational skills” (Nzegwu 1995, 453). This point is especially salient when considering the way in which literacy may ultimately harm the transmittal of knowledge. If a culture has traditionally transmitted knowledge through its long-standing oral history, but have that replaced in favor of literacy, then I would suspect that a great deal of knowledge would be lost in the transition. She is not calling for an end to literacy, however, or even an end to development projects in general, but is very cautious with regards to how such projects are undertaken. Taking Nzegwu's challenge seriously would require Nussbaum to either reconsider the prominence of education or be willing to redefine it in a way that better accommodates local specification.

A lesson that can be learned from these critiques of internalist essentialism is that if an individual theorizes merely by oneself, she can select others to challenge her theory in an arbitrary manner since no safeguards are in place to challenge the selection process.

Nussbaum is certainly aware of these concerns to some degree, and attempts to address them with her narrative approach. The hope is that by intervening with others who have a different worldview, she will be in a better position to understand the challenges of her list.

2.2 Arbitrary Selection of Other Perspectives in the Narrative Approach

Recall that Nussbaum's use of the narrative approach draws on the experiences of two Indian women, Vasanti and Jayamma, to show the "political importance of the imagination and the emotions" (Nussbaum 2000b, 15). Nussbaum draws on their experiences to stimulate her readers' imaginations with unfamiliar ways of life by, for instance, having the Indian women discuss the challenges of their daily life such as being a member in a caste and possessing the same formal equality as men, and yet facing substantive inequality. The hope is that one's imagination will spark emotions that identify certain domains of life as troubling because they are not compatible with living a dignified life. Furthermore, Nussbaum uses the narrative approach to show that those who do not share her worldview and who occupy different social strata can agree with her list.

One should not confuse the narrative approach with Nussbaum's use of the imaginative exercise. The imaginative exercise itself is merely used to spark emotions within a reader to ponder whether an individual who inhabits a radically different social world is afforded the opportunity to live a life compatible with dignity. Nussbaum draws on the narrative approach to show that her list, which is initially generated out of the imaginative exercise, has received cross-cultural support through discussions of the sort

that she had with Vasanti and Jayamma. Furthermore, Nussbaum says the narrative approach has the advantage of providing readers who do not have the same opportunity as her to interview people from different cultures a glimpse into their world. Her readers are then able to use their imaginations to better assess whether the interviewees have the chance to live a dignified life, and/or possibly present unique challenges to her list of capabilities that they would not have otherwise considered.

Susan Moller Okin has famously challenged the narrative approach as a legitimate method for demonstrating cross-cultural verification of Nussbaum's list. First, she cites the noticeable paucity of these two women's actual words which amount to one quotation from the two women in a three hundred page book.²³ Nussbaum admits that Jayamma does not "seem interested" in talking, but if that is the case, then it raises other questions about the validity of the interview itself. Second, in light of the first point, nearly "everything Nussbaum says about the two women, their lives, and even their thoughts, perceptions and emotions is filtered through her, and much of it is prefaced by phrases like it seems or suppose" (Okin 2003, 295).

I share Okin's concern that Nussbaum merely summarizes what she believes the Indian women are saying and then explains how their statements verify her list. The reader, then, is left in an uncomfortable state, since Nussbaum does not provide much evidence to give confidence that these women do, in fact, support her list. For instance, we are not afforded the details of how the Indian women responded to Nussbaum's questions, much less how they would evaluate the capabilities from her list.

²³ The only quotation Nussbaum provides of the women is Jayamma's political explanation for why she is unwilling to become a domestic servant: "As a servant, your alliance is with a class that is your enemy" (Nussbaum 2000, 19).

Nussbaum abandons justificatory strategies of Aristotelian internalist essentialism and the narrative approach in her later development of capabilities in favor of reflective equilibrium and overlapping consensus. I aim to argue, however, that she never escapes the problems identified here; that is, she continues to arbitrarily select others in order to make the claim that the capabilities from her list have received cross-cultural validity. If one accepts that her early methods of justification are subject to this criticism, then I believe this gives reason to pause when discussing the validity of overlapping consensus given that it requires showing that competing worldviews that are incompatible in some ways can nonetheless be compatible with her list, as well as the validity of attaining reflective equilibrium which, for Nussbaum, requires imagining the ways in which other perspectives would challenge and support her list.

2.3 Reflective Equilibrium

Nussbaum advocates wide rather than narrow reflective equilibrium, which includes scrutinizing one conception of justice against other conceptions of justice. This form of equilibrium is meant to avoid the problem of simply establishing internal coherence because it actively seeks out competing theories of justice and uses them to challenge one's own commitments. Nussbaum is unique in her conception of wide reflective equilibrium since for her it is not merely an individual endeavor. She likens her process to Rawls as one of a "multivocal character: justification is achieved not by individuals acting alone but by debate among Socratically deliberating individuals (Nussbaum 2011b, 77)." She continues, "I appeal to the interlocutor to ponder what is implicit in the notion of human dignity and a life in accordance with it. I ask the

interlocutor to consider that certain ways of life that human beings are forced to lead are not fully human, in the sense of being not worthy of the dignity of the human being” (78).

The fact that Nussbaum specifies the need to discuss the notion of human dignity with actual others shows a progression of thought. Critics such as Ackerly, Jaggar, and Okin have all argued that Nussbaum has justified her theory primarily based on what she believes others would say and not real discussions. Considering these feminist critics wrote their respective pieces before 2011, one could surmise that Nussbaum is responding to her critics. I find her attempt to incorporate actual dialogue in one of her justifications to be a promising step forward.

Nonetheless, despite this development, Nussbaum never describes how these dialogues should occur and who should participate. Furthermore, she never explains how to adjudicate between competing claims of the theorizer performing the task of striving for reflective equilibrium and her discussions with her interlocutor. That is, it could be the case that her discussions conflict with her own pursuit of equilibrium; then Nussbaum is in position to be the ultimate arbiter in regard to whether or not she finds her interlocutor’s claims valid. I find this particularly troubling because it shows that her theory again allows her to run the risk of simply ignoring other worldviews that challenge her perspective.

The point to take from Nussbaum’s discussion is that one cannot achieve equilibrium on this model without engaging an interlocutor to determine if her theoretical commitments can genuinely stand critical scrutiny. So a theorist cannot simply state what she believes constitutes another’s considered judgments based on the theorist’s imagination, but rather must actually speak to other people and secure their informed

desires and considered judgments as they state them. By “informed,” Nussbaum means desires that have been subject to scrutiny from multiple perspectives. Informed, as opposed to naïve desires, are those that have withstood rational scrutiny by others.

It is important to note that for Nussbaum one need not consider all intuitions or viewpoints. She asks us to “consult not all actual desires, but only some of them, desires formed under appropriate conditions” (Nussbaum 2000b, 160). It is not clear what she means by “appropriate,” but given her commitment to liberalism, it’s fair to say that it would include an individual who has the opportunity to exercise her autonomy in regards to forming her desires and intuitions so that her desires are not the result of coercion. So despite Nussbaum’s understanding of reflective equilibrium as having a “multivocal character,” we must be highly discretionary when selecting desires in order to avoid incorporating harmful ones, which might corrupt our theory. Nussbaum’s version of reflective equilibrium then cannot be performed individually, but with other deliberating individuals. Here, a theorizer must engage in dialogue with others in order to subject her views to scrutiny, which then makes her desires informed. The advantage of dialoguing with an interlocutor is to minimize the risk of a theorizer merely gleaning information from other perspectives that she then subsumes under her own.

A further problem with Nussbaum’s version of reflective equilibrium, though, is that by not seeking all intuitions, she runs the risk of arbitrarily choosing intuitions that match her own. She does not give us an account of what constitutes “appropriate conditions” for desire formation, and we have no sense of her criteria for discerning among intuitions which makes it too easy for her to exclude as “uninformed” any intuitions that diverge from her own. Furthermore, because Nussbaum is a Western

academic who has much power and privilege, it is easy for her to ignore or exclude (however unintentionally) the perspectives of those less powerful without consequence. In order to avoid this charge, she needs to offer a method that shows she is not simply choosing to converse with those who share her worldview to confirm her fixed moral judgments. Moreover, in virtue of Nussbaum's position of power, she is in charge of selecting informed from uninformed intuitions without any clear criteria. This, in turn, gives "additional worries about moral elitism and possibly neo-colonialism" (Jaggar 2006, 316).

Nkiru Nzegwu, for instance, contends that Nussbaum interprets indigenous cultures as "inert," that is, as "obsolete and not thought to have any significant initiating or critical role to play in industrialization" (Nzegwu 1995, 460). In brief, if individuals within Igbo (or any other indigenous) culture were hesitant to adopt education as a central capability, Nussbaum would consider them "misinformed" or "lacking full information". However, placing less value on literacy is not a matter of misunderstanding the nature of education (since Nussbaum conflates education with literacy), but a matter of situating the value of a certain kind of education within the socio-economic and historical context of a local region.

Furthermore, Nussbaum's method of selecting intuitions lacks a feedback loop to check her own intuitions against non-arbitrary others. In other words, because she subjects her list to scrutiny from those who share her values, rather than those who disagree, there is no genuine opportunity for self-criticism. Instead, other viewpoints are used merely to reinforce the values espoused on the list. However, self-criticism is especially important to ensure we are not merely claiming to achieve equilibrium by

critically examining our intuitions and theories, while simultaneously not taking other worldviews seriously. In other words, theorists cannot claim to have reached equilibrium without discussing and challenging their own considered judgments by other actual people. Nussbaum's decision not to consider all intuitions makes it too easy for her to import in and rationalize her own values free from critical scrutiny.

David Clark (2013) summarizes the above concern succinctly in his review of Nussbaum's 2011 book, *Creating Capabilities*: "there is no assurance that everyone's intuitions will be consulted or that social inequalities...will not affect the pursuit of reflective equilibrium in ways that are hard to detect" (176). The process to attain full equilibrium, which Nussbaum admits may not be possible, includes engaging others who do not share one's own commitments, and then deciding whether our theory of justice is able to withstand the criticisms. However, as I have argued, there is no way to show that other people who endorse comprehensive doctrines not shared with the theorizer have played a genuine role in Nussbaum's pursuit of equilibrium. Furthermore, she has not provided a fair procedure to decide whether her theory of justice can withstand potential criticism. In sum, Nussbaum has not addressed two primary issues—first, how to select interlocutors and (2) who decides, and how do we decide, whether a theory can withstand robust criticism from divergent perspectives.

The criticisms surrounding Nussbaum's methods of selecting intuitions are not limited to reflective equilibrium, but also plague internalist essentialism and the narrative approach, and so remain throughout both the flourishing and dignity versions of the capabilities. This criticism calls into question the cross-cultural support Nussbaum claims for her list, which in turn raises skepticism about her final method of justification—

overlapping consensus—since it demands appeal from a wide range of comprehensive doctrines.

2.4 Overlapping Consensus

Reflective equilibrium for Nussbaum establishes “which principles are just” and overlapping consensus determines “whether or not the conception of justice containing those principles is stable” (Stark 2009, 370). Overlapping consensus, in brief, seeks convergence amongst reasonable citizens on a political doctrine, which in this case is Nussbaum’s list of central capabilities. Convergence need not exist currently, however, a theorizer must show that “over time it is plausible to imagine that it might become a reality” (Nussbaum 2011b, 79). Reasonable citizens, as discussed in Chapter 1, are those who, based on liberal principles, accept that rights ought to be guaranteed to everyone, even if they choose not to exercise them.

In order for Nussbaum to claim that the capabilities approach, and her list more specifically, is an object of overlapping consensus she must show that it at least has the potential for cross-cultural support. In 2000, she appeared rather confident that the list was gaining the support it needed. Nussbaum (2000b) claimed that because input from “other voices has shaped its content in many ways,” the list represented a “type of *overlapping consensus* on the part of people with otherwise very different views of human life” (76, her emphasis). She has not wavered from this belief as evidenced most recently in *Creating Capabilities*. Indeed, Nussbaum believes that her commitment to respecting religious and cultural diversity has made capabilities even more appealing.

The previous sections were meant to demonstrate that universal support for her list is far from being realized. However, as Nussbaum mentioned, her list needs only to be a *plausible* object of consensus. I fear this too is a bit far-fetched. I am in complete agreement with Clark when he says there are too “few references to the ways in which these ‘other voices’ have shaped the list” (Clark 2013, 176). To address this problem, Nussbaum must show that she has taken various criticisms of her list seriously and used them to revise her theory. If she cannot do this, then it will be even more difficult for Nussbaum to achieve the goal of her list becoming a plausible objective of overlapping consensus.

Furthermore, other than noting that her “discussions” with people (especially, women) from India helped reveal the importance of property rights and bodily integrity, no other references are mentioned as contributing to the rest of the list. Since generating a new and more comprehensive list in 2000, she has not made a single modification to it in spite of many critiques, some of which I have made explicit here.²⁴ Either Nussbaum believes the list is flawless as it stands, or she is not taking challenges to it seriously. Specifically, if she believes the list is acceptable as it stands then she needs to defend it against criticisms, and if Nussbaum takes criticisms to her list seriously she must either offer a new method of justification that accommodates concerns that she is arbitrarily selecting other viewpoints to reinforce her own values, or explain why such a move is unnecessary despite these criticisms.

I am not convinced that simply because Nussbaum’s list may not become an object of overlapping consensus that all capabilities lists are subject to the same critique.

²⁴ For further criticisms of Nussbaum’s recent list, see Clark (2002), Jaggar (2006), Okin (2003), Sen (2005), and Robeyns (2003).

We could, in principle, envision a list of capabilities that best represents, from a cross-cultural perspective, what it truly means for an individual to live a life compatible with dignity. The claim here is simply that Nussbaum has not provided adequate evidence to support her assertion that her list has received widespread agreement. Specifically, I am troubled by Nussbaum's haphazard dismissal of worldviews and beliefs that do not match her own. Nussbaum is seeking to justify her list to all, and while we are all presumably subject to the list, only some of us have an opportunity to genuinely accept it insofar as it can be justified to us in a way that is acceptable. In order to gain the cross-cultural support she desires, Nussbaum must give a concerted effort to engage the critics, especially from those who are traditionally marginalized, and, at that point, a genuine convergence on her list will be possible. Until then, I would make the strong claim that her list does not have the potential to become an object of overlapping consensus.

Stark raises another ambiguity in Nussbaum's use of overlapping consensus, which raises further concerns, namely, the ambiguity surrounding whether overlapping consensus is really consensus of the list or consensus of the justification for the list. She states,

If it turns out that legitimacy requires overlapping consensus on principles of justice *and their justification*, then establishing that the list of capabilities (or the principles derived from it) be the object of overlapping consensus cannot serve as a justification for the list, because the justification for the list must itself be the object of overlapping consensus (Stark 2009, 375, her emphasis).

Stark suggests that convergence on the actual items from the list do not demonstrate a genuine justification since they can be interpreted in many ways. She argues that Nussbaum should seek overlapping consensus on the justification for her list, that is, the reasons why those who are affected by the list should adopt them. The advantage to

demanding convergence on the justification (as opposed to the actual list) is that the items from the justification will be likely agreed upon since those affected by the list agreed to how the items are constructed and defended. Overlapping consensus on the justification for the list would then increase the likelihood that genuine consensus has been achieved.

However, even if overlapping consensus provides the justification itself, there would be more unanswered questions, such as how the capabilities on the list were generated and defended. This raises the broader concern as to how Nussbaum generates and defends the list, and as we have seen thus far, at best she provides only a vague account of it. Stark's criticism calls into question the validity of Nussbaum's use of overlapping consensus.

There is one further problem with Nussbaum's attempt to make her list justifiable to all (or nearly all) through overlapping consensus. Keep in mind, as I noted in Chapter 1, overlapping consensus seeks convergence among "reasonable persons". This conception of the person precludes so-called unreasonable persons, such as those who are severely cognitively disabled, from participating in the political process. Thus, the interests of severely cognitively disabled individuals will not necessarily be represented unless by the graces of non-cognitively disabled persons. Nussbaum rejects Rawlsian contractarianism for this very reason, that is, its lack of inclusivity. However, she is subject to the very same criticism. Either Nussbaum must accept the contractarian's ideal citizen, which excludes those who have a severe cognitive disability, or jettison overlapping consensus as a method for justifying her list to everyone. Her third option would be to revise her notion of reasonableness to be more inclusive.

3. Flaw #3: Negligence of Power Dynamics

It is widely recognized in the health sciences that power dynamics exist, including relations of power between researchers and the subjects in the contexts they study.²⁵ The ways in which asymmetrical power relations can shape one's theory may vary greatly. I'm interested here in ways that power operates which may not appear obvious. For instance, subjects may simply agree with the interviewer in order to placate him, or because if they do not answer in a way that an interviewer desires, they may fear that he will portray their culture in a way that perpetuates negative stereotypes. It is the latter of these two forms of abuse that I will argue Nussbaum is guilty of committing, especially in her narrative approach and her use of reflective equilibrium.

3.1 Negligence of Power in Nussbaum's Use of the Narrative Approach

I begin my discussion of neglecting power dynamics with the narrative approach since this method of justification is especially susceptible to this criticism. As a theorist from a very privileged social and global position, Nussbaum has the opportunity to discuss her worldview with as many or few people as she desires, and she is also able to determine whether (and to what extent) she wishes to incorporate others' considered judgments into her theorizing.

Susan Okin criticizes Nussbaum for her dismissal of the voices of poor people. She focuses exclusively on the empirically-driven two volume book by the International Bank for Reconstruction and Development, *Voices of the Poor*, which "broke new ground by asking poor people themselves about their poverty and its impact on their lives" (Okin

²⁵ In the health sciences, theorizers have discussed the ways in which science is biased against women. This is due in large part to the power disparities within research between men and women. For instance, see Dickson (1993), Figert (2005), and Messing (2014). Also, the social sciences have discussed the ways in which power has shaped theory; see Smith (2014) and Zavella (1996).

2003, 304). This book reveals several discrepancies between the perspectives of poor people and Nussbaum's elaboration of several key capabilities. For example, the poor are less concerned with using practical reason as Nussbaum defines it, that is, as forming a conception of the good and critically assessing it. Instead, the poor generally know what a good life is and simply want the ability to live it. Okin (2003), following the voices of the poor, argues that they merely seek work to "earn them a living and restore their self-respect" (311). The ability to gain self-respect is on Nussbaum's list. However, the poor are not concerned with having the opportunity to reflect on the good life (despite often doing so).

Furthermore, Nussbaum claims that work itself must create the space for practical reason; that is, having the ability to form a conception of the good and critically reflect on it. However, Okin argues that the poor are not interested in using work as a space to develop practical reason, but rather as simply a means for earning a living. These examples illustrate that if Nussbaum had sought the perspectives of the poor, then she may have re-considered certain items on her list. For example, perhaps she would revise her account of practical reason and her understanding of the nature of work.

In defense of Nussbaum, Rutger Claassen makes a distinction between a philosopher-hermit, who believes his theory has no practical relevance, and the philosopher-king, who believes his theory is best for society and thus does not seek compromise or to alter the theory, and the philosopher-citizen, who proposes his theory to be considered in the democratic process. Claassen uses these distinctions to argue that Nussbaum is defending a partial conception of justice that is merely used as a point of departure to be considered under democratic discourse. He argues that Nussbaum is a

"philosopher-citizen" since she clearly recommends "her theory to a democratic public, trying to persuade them, all the while respecting the consent of the people" (Claassen 2011, 502). In other words, contrary to Okin, he believes Nussbaum has adequately situated herself as a philosopher who can present a universal list of capabilities because she has interacted with others from different social strata and differently situated geopolitics, and as a result of these interactions presents the list as a humble and workable document.

The problem with Claassen's defense is that my criticism, following Okin's, runs much deeper than simply being concerned with her having interactions with others or not. I concede that Nussbaum is considered a philosopher-citizen insofar as she believes her theory ought to be put into practice by both international governing bodies and state constitutions, and Nussbaum does claim that her list is in principle revisable. However, I am concerned that the interactions she has had with diverse others have lead her either to conclude without warrant that she has received further confirmation of her list, or to outright dismiss those who question the list.

As Okin puts it, "their interpreter [Nussbaum] has allowed her own voice to dominate" (Okin 2003, 297). A primary concern for Okin is the fact that Nussbaum speaks on behalf of the Indian women she interviews. We have no real insight into their thoughts and perceptions of the world except those Nussbaum shares with us. We are not afforded the questions of the interview or their direct responses, making it possible for Nussbaum to selectively include data that supports her values and interpret what they say without accountability. This allows Nussbaum to make assertions such as "people who once learn and experience these capabilities don't want to go back", which she then uses

in order to turn interview data into evidence for her position (Nussbaum 2000b, 152-3). There is no way to verify this statement from the interviews, and in fact it could be the case that people may be hostile towards some of Nussbaum's capabilities. We have no insight into possible challenges the women might have raised to the list, whether it be identifying values not included or criticizing items that are. Nussbaum is able to appear as though she has gained cross-cultural support for the list, and yet she presents no real challenge to it. In this sense she continues to import her values into the list, or at the very least, we have good reason to suspect that she has done so even if inadvertently. At the very least, she has not yet provided rational warrant for her assertions. Nonetheless, whether Nussbaum has or hasn't, the main point is that she has not provided a reliable and accurate guide for interpreting and using the data she collects from her conversations. Thus my response to Claassen's defense of Nussbaum is that he fails to pay attention to how she interacts with others in order to derive support for her list.

Alison Jaggar also contends that Nussbaum does not consider the power inequalities between her and the Indian women she interviews. Nussbaum's power, as a Western scholar, relative to the Indian women she interviews, may influence how Vasanti and Jayamma respond to her questions. If the respondents are trying to placate her, they might simply say what she wants to hear or respond in a way that best represents their culture to a Westerner. We have no evidence showing that Nussbaum's respondents were given a genuine opportunity to raise concerns, which may be a result of the power inequalities between her and the Indian women. Nussbaum could easily have treated them merely as a source of information—someone whose subjectivity is stripped solely for the purpose of gathering information.

One reason Vasanti and Jayamma may have been treated as mere objects from which to glean information rather than as subjects participating in genuine dialogue is for the purpose of using their input to “confirm” features of Nussbaum’s theory. I am not claiming Nussbaum intentionally does this, nor am I claiming that she has covertly sought to construct a theory that support her own worldview. The problem is that this method of justification lacks any form of feedback loop that requires a theorizer to critically engage her critics. The poor Indian women Nussbaum dialogues with “provide information about the particular details of their lives...but ‘we’ retain the authority to collect this information, assess the moral worth of the reported desires and aspirations, and generalize the results into a universal theory” (Jaggar 2006, 319). Thus, Nussbaum is able to proclaim the values she finds most praiseworthy as fully universal since “others” find her list plausible.

A goal of the narrative approach is to offer support for Nussbaum’s list from people who inhabit different geo-political positions and accept different comprehensive doctrines. This provides part of the cross-cultural verification Nussbaum seeks. However, this approach seems to be plagued by a problem of power asymmetries between the theorizer and her subjects, which allows Nussbaum to claim that capabilities from her list represent values shared by nearly everyone, and yet is only confirmed by her own authority.

3.2 Nussbaum’s Response to Okin

The narrative approach is meant to reveal culturally informed preferences, but my concerns of the asymmetrical power imbalance between Nussbaum and the Indian

women she interviews calls the preferences she has elicited to support her view into question. Relying on the narrative approach as a justification allows the theorizer too much latitude in interpreting the responses and using respondent answers inappropriately.

In a formal reply to Okin's criticisms, Nussbaum (2004) argues that the narrative approach is "not a method of political justification" but one of "civic education" (202). That is, the narrative approach is primarily a "heuristic" device to assist readers in imagining what it would be like in foreign situations. For example, the stories of Vasanti and Jayamma reveal problems with being socially-situated in a particular caste, under harsh working conditions, lacking access to healthcare, and having their bodily integrity violated. The hope is that their stories will reveal insights about values otherwise unknown or too easily taken for granted to readers, or bring greater attention to values that have been previously ignored.

Nussbaum recounts stories from Vasanti and Jayamma who told her that they do not desire education. Despite their views on education, Nussbaum remains steadfast in her commitment to it. She writes, "the fact that neither of these *illiterate* women expresses a desire for education does not undermine my confidence that education is a very crucial goal for women and girls in India" (Nussbaum 2004, 203-4, emphasis added). This quote again reveals Nussbaum's conflation of literacy and education. It is no surprise that Nussbaum would dismiss an illiterate person's rejection of education as a central capability since Nussbaum automatically rules from the outset that their preferences regarding education are mistaken.

The narrative approach allows us to have a glimpse into the ways of life unfamiliar to our own. Nussbaum concludes that this method of justification is valuable

insofar as it provides insights into ways of life otherwise unknown. For instance, she says her interactions with the Indian women helped her connect central capabilities to one another from her list, namely, control over one's environment and bodily integrity. This connection has led her to place greater emphasis on the need for women to have access to loans and private property since this, in turn, helps provide greater protection for women over their bodies.

Despite the narrative approach's benefit of connecting central capabilities, we may still question whether and how this functions to justify her list. To be fair, Nussbaum admits that the narrative approach is not her primary justification (which for her is reflective equilibrium and overlapping consensus). Nonetheless, the narrative approach still provides ancillary support for her list insofar as it shows that the experience of people who inhabit different social strata still share many of the same values as Nussbaum espouses on her list.

However, I am troubled with Nussbaum's implementation of the narrative approach since she has the ability to exacerbate the educational (and power) disparities between herself and the Indian women. For instance, Nussbaum did not need to note that the Indian women are "uneducated," at least by her own standards. This is troubling because Nussbaum is able to claim that the respondents' lack enthusiasm for education is simply a result of their unfamiliarity with it. Whether or not this claim is true, the deeper concern is that no safeguard is in place to guard against the possibility of Nussbaum, who is in a position of power, exploiting those who lack her status and position of authority.

One might argue that Nussbaum would deem the poors' intuitions as unreliable and untrustworthy since they have been formed under oppressive conditions. Nussbaum,

in fact, considers very few people's intuitions. She considers only those that have been developed under conditions where most capabilities from her list have already been realized, since as she argues it is under these conditions that people have the opportunity to critically scrutinize their beliefs. Critical assessment of capabilities, at minimum, requires possessing them for a period of time. If an individual inhabits a community that is unable to provide these capabilities or rejects them for whatever reason (especially education), then Nussbaum seems to dismiss their worldview or perspective out of hand.

Power disparities between Nussbaum and her respondents are very apparent in the narrative approach. However, this is not the only method of justification that is subject to this criticism. Because Nussbaum's version of reflective equilibrium requires the theorizer to engage in dialogue with others, this method is also vulnerable to a theorizer abusing her position of power.

3.3 My Defense of Okin's Criticism: Neglecting Power Dynamics in Reflective Equilibrium

The process of reflective equilibrium for Nussbaum is "Socratic". That is, it begins with an individual dialoguing with interlocutors while seeking equilibrium between an individual's considered moral judgments, set of theoretical principles, and background assumptions. As Nussbaum uses this method, individuals ponder and discuss which aspects of life are intuitively compatible with dignity. She believes that people's intuitions will reveal that the most important aspects of living a dignified life will include the capabilities from her list.

One may question how the above process protects marginalized voices, such as women in less privileged social positions than Nussbaum's and the poor. To this,

Nussbaum (2004) argues that “many of the capabilities are prerequisites for those voices to be heard” (199). For instance, she argues that the capability of control over one’s environment includes the basic good of free press. Despite the fact that many poor women do not ask for free press, according to Nussbaum, it may ultimately be necessary for the fulfillment of their goals. Furthermore, Nussbaum claims that a further safeguard in place to ensure marginalized voices are not ignored is to require political conceptions (such as the capabilities list) to be implemented within a nation. Nussbaum (2004) believes then that the political principles will “only be implemented if the voices of those involved actually sign on to it” (199). An organization outside a given nation cannot determine how to interpret, and subsequently, manifest aspects of the political conception under discussion. Thus her list protects those who are marginalized insofar as the central capabilities are prerequisites for the marginalized to be heard.

Yet Nussbaum’s response does not directly address how reflective equilibrium ensures that marginalized peoples are protected. Recall her argument for her central list of capabilities based on reflective equilibrium. She argues that upon seeking coherence between our intuitions on what it means to live a life compatible with dignity, our theoretical principles, and background assumptions, we will arrive at a list of capabilities like her list. The theorizer until now has only reached narrow reflective equilibrium, but Nussbaum’s goal is to achieve equilibrium in the wide sense, which requires challenging her list from other perspectives. So the theorizer challenges her intuitions and theoretical commitments against perspectives and worldviews she does not share.

There are several problems with claiming that reflective equilibrium, as articulated by Nussbaum, will actually provide a voice to traditionally non-dominant

group members. First, Nussbaum, as the theorizer, has the power to decide which capabilities are “prerequisites” for the voices of the marginalized to be heard and so also which voices are excluded on grounds that they are ill-formed because they are formed under oppressive conditions. She makes the initial decision that her list of central capabilities will provide adequate power for women, the poor, and other marginalized groups to be heard. I do not doubt that having bodily integrity or free speech, for instance, are crucial features for anyone, especially women, to express themselves. However, how does Nussbaum know what is best for a particular group of people to be heard in their context if she does not take their challenges seriously? She may argue that the general capability of free speech or bodily integrity can be interpreted differently, which allows different contexts to manifest a capability in its own way. This too is unsatisfying since a particular capability may be interpreted so differently that she would not endorse it as a legitimate interpretation of that capability. For instance, Nussbaum would reject a community’s interpretation of education without a literacy component as not in fact advancing the capability of education. The general problem, then, is that Nussbaum claims her list is revisable while ruling out in advance the critical potential for revising the list of any voices of the most marginalized groups.

I do not believe that being in a position of power necessarily negates all the results produced by that the powerful group or individuals. But social power relations are ubiquitous and anyone purporting to develop a global moral theory must attend to how these power dynamics may be influencing the process of theory construction and defense. I have argued in this section that power imbalances have shaped Nussbaum’s theory in a harmful manner as she has summarily dismissed viewpoints from marginalized groups

without any major repercussions and without any sound justification for so doing. My hope in this section is to call attention to the need for safeguards against a theorizer abusing their position of power.

4. Methodological Considerations

In this final section of Chapter 2, I argue that one significant reason why Nussbaum's methods of justifications are subject to the above three flaws of arbitrarily selecting others, neglecting power relations, and uncritically importing values, is a methodological commitment to monological moral reasoning. The problem here with reasoning monologically is that Nussbaum is the sole arbiter who sorts through the information, decides what merits attention, and what is illicit and worthy of consideration. This form of moral reasoning renders us more prone to harmful biases and errors. I will suggest that a possible way to address this concern is by replacing monological moral reasoning with a dialogical version.

4.1 Monological Moral Reasoning

A theorizer who engages in moral reasoning without having a procedure in her theory that emphasizes the need to adjust her theory in light of interactions with others is reasoning monologically. Jari Ilmari Niemi (2008) describes this account of moral reasoning as a justification "addressed to oneself" (257). In a similar manner, Angelika Krebs (1997) explains that monologism requires a theorizer to reflect "all by oneself" (271).

Nussbaum's methodology is monological to the extent that, as the theorizer, she does not have to critically engage in dialogue with her interlocutors in order to raise challenges and justify her version of capabilities. A commitment to monologism seems to have been fundamental to both her early and later justifications. For instance, Aristotelian internalist essentialism does not ask the theorizer to engage in meaningful discussions with people from other cultures as she attempts to find overlapping "spheres of experience". Instead, she reads stories and myths from her own culture and other cultures, interprets other cultural myths on her own, and then from these interpretations makes her best judgment as to which capabilities best represent a truly human life.

Furthermore, based on Nussbaum's primary justification of her later works, namely, reflective equilibrium, a theorizer herself can perform all the necessary steps to justify the capabilities approach. Despite Nussbaum's use of reflective equilibrium, which may appear to be dialogical insofar as she calls for Socratic (imaginative) dialogue, as I have shown her interlocutors are merely imaginative. Even so, the problem isn't just that one imagines interlocutors; it's that the imagined interlocutors are given no real epistemic authority to potentially alter the outcome. So Nussbaum remains the sole arbiter of which intuitions she chooses to challenge her own, and if others' beliefs and practices conflict with hers she has the power to ignore them, which she does.

4.2 The Concern of Implicit Bias

One problem with monologism is that it too easily allows implicit biases to influence one's reasoning. We are extremely vulnerable to cognitive distortions when reasoning privately. A concern with private moral reasoning is the myriad of ways it can

cloud a theorizer's judgment. This is especially concerning when such judgments may arise in a way that is not even cognizant to the agent, which is what happens in the case of implicit biases. Here, an

Individual harbors an implicit bias against some stigmatized group (G), when she has automatic cognitive or effective associations between (her concept of) G and some negative property (P) or stereotypic trait (T), which are accessible and can be operative in influencing judgment and behavior without the conscious awareness of the agent (Holroyd 2012, 275).

Jules Holroyd discerns three key features of implicit bias. First, the implicit feature of the bias does not denote the concepts held, but the association between the negative stereotype and the group it represents. For instance, if a person holds an implicit bias that black people are dangerous, then the implicitness refers to his *association* between the negative stereotype of being dangerous and black people. Second, we have to distinguish between having the bias and the way in which (or whether) the bias influences our behavior. In other words, one may have an implicit bias, but not let it influence one's behavior. Finally, the associations are not reached through reasoning, but are an automatic response.

Cognitive psychologists often determine whether a person has an implicit bias through the Implicit Association Test (IAT). The IAT is less concerned with how a person feels about a particular group, but their immediate response. It is difficult to uncover these responses since they are not very accessible. So, in order to reveal them, psychologists give respondents a group of concepts and they are asked to match them with another set of concepts. For instance, they might be asked to match positive terms (e.g., good and bright) with white people first and then black people afterwards. If an implicit bias exists, the respondent will take longer to match the positive terms with black

people than white people. Regardless of her conscious belief that states she is not afraid of black people, the IAT will measure unreflective feelings toward groups under question. That is, the test will reveal that she is, in fact, really afraid of black people but that the feeling manifests unconsciously. Cognitive psychologists have used the IAT to measure implicit biases in many professions and across gender, social, and economic borders.²⁶ Implicit bias is very common, and depending on the bias can easily influence our moral reasoning. Thus we ought to be wary of monological methods of moral reasoning, especially those that purport to generate norms that are supposed to be universally valid precisely because they have allegedly been well-vetted and are claimed to be unbiased.

One may argue that since these biases are implicit, there is no genuine way to uncover them, and thus no way to address the problem. In response, Peggy DesAutels (2012) notes, following research by neuroscientists, that our “brains are able, to some degree, to correct our perceptions when our predictions fail to match up with sensory inputs” (342). In other words, uncovering implicit biases is not impossible, and they are also not impossible to correct.

Jennifer Saul offers seven potential solutions to address implicit bias. However, for our purposes, the most relevant of these is a demand that the agent “justify” and “reflect” on the “potential for stereotypes to play a role” in one’s cognition (Saul 2012, 259). Saul argues correctly that part of justifying one’s position involves at the very least having an “explicit discussion” with relevant others, that is, those who one is

²⁶ Some of these studies have revealed biases in white basketball referees calling slightly higher fouls on black players and black referees calling slightly more fouls on white players (Price and Wolfers 2010). Furthermore, IAT has also explained why resumes with white names have received greater callbacks than black names despite some companies claiming to be an “Equal Opportunity Employer” (Bertrand and Mullainathan 2004).

recommending to accept the view she puts forward. The hope is that such discussions will call attention to any possible negative stereotypes that were previously unknown to the agent.

We are now in better position to understand why the feminist critics charge that Nussbaum's justification of the capabilities is vulnerable to charges of being sexist, neo-colonial, and imperialist. Their criticisms are not in regards to whether Nussbaum in fact manifests behaviors resembling neo-colonial or imperial attitudes since most people (including Nussbaum) would condemn behavior associated with these biases, despite possibly possessing them. These critics reveal a monological pattern in Nussbaum's moral reasoning that insulates her from the kind of critical scrutiny that might expose the influence of cognitive limitations engendered by implicit bias on her theory. Krebs and Niemi explain that Nussbaum engages in monological moral reasoning insofar as her justifications are addressed "to herself" and performed "alone". Despite Nussbaum's claim that she has rigorously challenged her theory (and specifically, the list) from different perspectives, it is difficult to see the ways in which she has either incorporated different worldviews or shown why her position is superior to others. For example, she does not discuss why her list could include other capabilities. Without the proper checks against her theory, Nussbaum is likely to produce results that mirror the colonial project, albeit unintentionally, especially because she is a Western theorist claiming to make moral norms that are globally valid and that ought to be used to judge and criticize quality of life in parts of the world that "the West" has historically ravaged. This is especially troubling for Nussbaum, though, since she claims to be actively striving to avoid imposing a set of values on a group of people.

The studies on implicit bias suggest that we are all prone to these attitudes. Regardless of how much we may vehemently reject attitudes and behaviors that represent negative stereotypes to certain groups, suffering from an implicit bias is a real possibility. Because Nussbaum does not consider the ways in which possible biases may influence her justificatory strategies (and subsequently, her theory), she runs an even greater risk of such attitudes influencing her theory. Nussbaum's feminist critics do not mention implicit bias as a concern, although their criticisms of defending a theory that is laden with Western, and even sexist, biases reveal why theorists need measures to guard against the impact of implicit bias.

I am not trying to overstate the interconnection between monological moral reasoning and implicit bias. In fact, dialogue is also an insufficient corrective for implicit bias and other epistemic prejudices, but it may be necessary or, at the very least, we have good reason to believe that it is better than monologue. Implicit bias can lead us to underestimate the "trustworthiness of people who belong to 'suspect' social groups" and in so doing we run the risk not only of reinforcing forms of epistemic injustice, but also of cutting ourselves off from the possibility of learning from these groups (323). Nussbaum's dismissive attitude towards Bangladeshi and Indian women who hesitate to wholeheartedly endorse education as a crucial capability seems to do just this. I hope to have made the case that if one is wedded to monological moral reasoning, then one is in a worse position to correct for potentially implicit racist and sexist biases, since no feedback loops are in place to guard against those biases from infiltrating one's theory and thus advancing a moral theory that might itself rationalize racism and sexism. Such theories harm a lot of people and are not well-suited to expose these influences.

4.3 One Possible Way Forward

Concerns surrounding implicit bias point to the need for an alternative methodology. I will suggest dialogical, as opposed to monological, methods of moral reasoning and justification will have better safeguards in place to avoid harmful biases and prejudicial results. A theorizer who adopts a dialogical methodology must critically engage others and use their feedback to adjust their own position. One cannot simply appeal to others, as we have seen in Nussbaum's use of internalist essentialism and reflective equilibrium, but rather must seriously dialogue with others in such a way that the conversation between the theorizer and others yields a collective result.

To be clear, a person who endorses monological moral reasoning may also "converse" with others. Nussbaum believes her version of reflective equilibrium demands some form of interaction with concrete others. Maeve Cooke (2000) sums up Nussbaum's version of monological moral reasoning as a "*private* process in which citizens work out for themselves whether the advocated political principles are reasonable in the sense of capable of being reasonably accepted by all" (958, her emphasis). In other words, even reflective equilibrium, to some degree, must consider other perspectives. Nonetheless, the problem for reflective equilibrium still remains; that is, what is acceptable by all still remains determined by the individual theorizer.

However, merely considering other perspectives does not suffice for dialogical moral reasoning. Nussbaum claims that the theorizer must engage in a Socratic dialogue, but she never states the extent to which we must actively converse with other human beings, or gives any sense of the conditions that need to be met for a genuine dialogue to

occur. Moreover, dialogical moral reasoning does not simply require that we talk with others, since that may occur monologically too. For instance, a teacher that is uninterested in receiving feedback may simply lecture during the duration of his class and any questions he receives may be dismissed as sophomoric. In this case, there is some “dialogue” occurring, but not the kind required for it to be considered dialogic. Simply put, dialogical moral reasoning is not simply two or more people conversing. Instead, the theorizer must specify *how* discussion between discursive participants should occur, and the *goal* of the discussion. It seems like her commitment to reflective equilibrium allows us to simply learn about other worldviews and use them to challenge our own intuitions in a Socratic-like form. In this way we can imagine how others would criticize our views and adjust our own theory accordingly.

One might argue that Nussbaum has already advocated for an account of moral reasoning that is dialogical, namely, the narrative approach, because on this approach Nussbaum does talk with actual other people. Yet genuine dialogue, as I will defend it, differs from what Nussbaum does in the narrative in at least two ways. First, Nussbaum never has a genuine conversation with the Indian women. Instead, she inquires about their daily routines, including their political commitments, and then draws a number of conclusions in order to determine which aspects of her list they endorse (e.g., bodily integrity) and reject (e.g., education). Second, as I have shown in Sections 1.2 and 2.1, Nussbaum never truly seeks their feedback. For instance, she dismisses their lack of enthusiasm for education as a problem with possessing adaptive preferences rather than pursuing their reasons for this seeming lack of enthusiasm.²⁷ So Nussbaum asserts that

²⁷ For a comprehensive discussion on the nature of adaptive preferences, see Khader (2011).

Vasanti and Jayamma have adapted the preference of not valuing education because they do not understand its benefits.

This example illustrates Nussbaum's lack of genuine dialogical engagement with those who challenge her perspective, and thus we cannot claim she is engaged in dialogical moral reasoning simply because she finds some value in the narrative approach. Dialogue is not the same thing as talking with others. Furthermore, it points to the need for a dialogical approach to moral reasoning since it would reduce the possibility of Nussbaum dismissing views that run contrary to her beliefs.

5. Conclusion

There is an array of problems associated with monological moral reasoning, especially as it serves to defend a method of justification. I posit that a concern with Nussbaum is that her commitment to monologism leads her to rely on methods of justification that are prone to harmful biases and prejudices. The same types of challenges that were presented to Nussbaum in her early works are also found in her most recent works. Brooke Ackerly, for instance, criticizes Nussbaum's justificatory strategy of internalist essentialism for not having safeguards against smuggling her own values into her theory; likewise, Alison Jaggar has criticized Nussbaum's use of reflective equilibrium for also allowing her to import values. However, as I argued, a theorizer is not forced to accept monological moral reasoning for constructing and defending her outcomes.

I will suggest a different justificatory strategy in the following chapter, one that is consistent with dialogical moral reasoning, namely, discourse ethics. Simply put,

discourse ethics claims that a norm is justified if all free and equal participants who are affected by the decision can agree upon it, and it specifies discursive conditions that must be met in order for a dialogue to occur. The following chapter will present a traditional version of discourse ethics articulated and defended by its founders, Karl-Otto Apel and Jürgen Habermas. I will then show how it has been modified by Seyla Benhabib to accommodate moral and religious pluralism.

CHAPTER THREE: DISCOURSE ETHICS: DISCERNING METHODOLOGICAL CRITERIA

Martha Nussbaum argues that her capabilities has gained cross-cultural support, or at least has the potential to do so. She uses reflective equilibrium to construct a list that is consistent with her intuitions about dignity and corresponding principles of justice, and then demonstrates how this list has the potential to be a basis for international documents by becoming an object of overlapping consensus. However, drawing on various feminist critics, I have shown that Nussbaum's list has not received the universal validity she claims and is not able to assist us in identifying many instances of gender injustice.

I share Nussbaum's methodological goal that a good method of justification for a list of capabilities will be a method that can generate wide cross-cultural (perhaps, universal) support for the list. However, we part ways insofar as I believe that justification to achieve this goal requires dialogical methods as opposed to monological ones. I examine the dialogical method of moral justification offered by discourse ethics as a potentially better method for justifying the capabilities.

Specifically, this chapter considers discourse ethics as a possible alternative method for justifying the capabilities given the problems I raised in the previous chapter with Nussbaum's methods of justification. My discussion of discourse ethics will begin with its founders, Jürgen Habermas and Karl-Otto Apel. I will then show how Seyla Benhabib later revised their accounts to better accommodate moral and religious pluralism. Although discourse ethics is more promising than reflective equilibrium and overlapping consensus for securing broad cross-cultural justification for the capabilities, it is actually still susceptible to many of the same criticisms as these other methods.

Despite the advantages of discourse ethics as it has been traditionally conceived, I will show the ways in which feminist critics of Nussbaum and the critics of traditional versions of discourse converge on many of the same problems. I suggest that a feminist inspired version of discourse ethics, aspects of which have been articulated by various philosophers over the past twenty years, offers a version of dialogical justification that may be more capable of justifying the capabilities for a diverse and unequal world. I outline this theory of feminist practical dialogue in chapter four.

1. The Origins of Discourse Ethics

Discourse ethics originated in the work of Jürgen Habermas (1990) and Karl Otto Apel (2001). It is not a normative theory in the same way as consequentialism and deontology are moral theories, insofar as the latter theories determine the rightness of an action based on whether it is consistent with its core principles—for example, producing the best consequences and performing the correct duty, respectively. Instead, discourse ethics is a meta-ethical theory that evaluates moral claims “not directly by reference to their content but instead by reference to the reasoning through which they are justified” (Jaggar and Tobin 2013, 391). So, it could be the case that one engages in either strictly consequentialist or deontological moral reasoning to reach a belief, and then uses discourse ethics to assess the moral validity of the claim.

1.1 Discourse Ethics Methodology

Habermas’s version of discourse ethics has Kantian roots. He highlights the close relationship between himself and Kant when he says that discourse ethics “replaces the

Kantian categorical imperatives by a procedure of moral argumentation” (Habermas 1990, 197).²⁸ Kantian and discourse ethics’ methodologies are very similar insofar as both draw on contradictions to generate norms. The former generates duties to which all rational beings are bound. The latter seeks conditions for the possibility of genuine discourse, and if these conditions are satisfied, the norms generated out of them are valid. Habermas and Apel are committed to a Kantian-like methodology that yields a contradiction to determine the necessary “pragmatic presuppositions” of discourse, or what we might call necessary discursive conditions.

Habermas and Apel search for what must be presupposed in order for discourse to occur, and they use the idea of a performative contradiction to identify those presuppositions. Habermas, following Apel, explains that a “performative contradiction occurs when a constative speech act $k(p)$ rests on noncontingent presuppositions whose propositional content contradicts the asserted proposition p ” (Habermas 1990, 80). Consider an ethical skeptic who denies that we can make true or false moral claims. Apel suggests that in putting forth his position, the skeptic “necessarily assumes the validity of at least those logical rules that are irreplaceable if we are to understand his argument as a refutation” of grounding moral principles (cited in Habermas 1990, 81). In other words, the skeptic is guilty of putting forth a performative contradiction because he holds steadfast to the truth of his agnosticism towards the validity of moral statements, yet simultaneously rejects the ability to make true or false statements about morality. This is considered a performative contradiction insofar as holding onto the truth or falsity of a moral belief contradicts the charge to refrain from holding any beliefs about morality.

²⁸ It is beyond this project to engage in a thorough historical analysis of Kant’s influence on Habermas and Apel. For a further discussion on the ways in which Apel appropriates (and distances) himself from Kant, see Apel (2001, 53-64).

Habermas's method of moral reasoning to uncover the rules of discourse is monological; these rules are not discovered through intersubjective discourse, but rather by identifying the formally necessary conditions that must be satisfied for discourse. In other words, the idea of a performative contradiction itself does not require dialogue with others, but is the result of monological reasoning and shares in the Kantian idea of a transcendental justification. One might ask if Habermas is simply begging the question because he does not use discourse in order to determine and justify the conditions of discourse. Habermas and Apel's (2001) example comes from Descartes, noting that one could not say: "I hereby think that I (now) don't exist" since such a statement would be an example of a performative self-contradiction (45). It is a contradiction insofar as thinking that one does not exist necessarily entails one's existence. Habermas cites this example to show that Apel "revives the transcendental mode of justification using the tools of a pragmatics of language" (80). In other words, the rules of discourse are not arbitrarily created, but are generated as necessary conditions given the pragmatic of language that must be satisfied in order to have a genuine discussion that can yield a fair outcome to occur. Once the following rules are established based on the idea of a performative contradiction, then actual dialogue constrained by these rules is used to seek rational justification to pursue the agreed upon action.

1.2 Rules of Discourse

From the idea of a performative contradiction, Habermas generates three levels of rules (or "pragmatic presuppositions") that are necessary in order to have genuine discourse. The first set of rules are logical and semantic, such as "no speaker should

contradict herself". Habermas believes these rules are void of ethical content, but they are the foundation for discourse ethics since genuine dialogue cannot exist without a few shared assumptions, including one's commitment to not contradict oneself.

At the second level are procedural norms that express all the rules necessary by assuming a "hypothetical attitude and being relieved of the pressures of action and experience...for a search for truth organized in the form of a competition" (Habermas 1990, 87). Here, the dialoguers place themselves in ideal speech situations where they test the validity of each other's claims. For example, the principle of accountability says a discursive participant must provide reasons for her position, or, if she chooses not to provide a justification, she must explain why she is withholding reasons. Habermas requires people to provide explanations for why they believe what they do since discourse by definition implies putting forth reasons and responding to them. A further procedural norm includes the principle of sincerity; here, a dialoguer is asked only to assert what she truly believes. To understand the significance of procedural norms this principle of sincerity derives from the fact that it would be contradictory to put forth a belief as a person's own and yet maintain that this belief is not hers. This would be tantamount to claiming "I am committed to X, but don't really believe it".

Finally at the third level are rhetorical rules, which are used to achieve the ideal conditions of speech, and which include immunity from repression and coercion. Habermas is adamant that participants cannot be coerced or forced into saying something they do not endorse or assimilate to a position which they do not accept. In other words, ideal speech conditions are distinguished from actual speech conditions in part by the fact that the former are free from biases that stem from self-interest or coercive influences

such as suppressing certain voices (external coercion) or making those who desire to speak too uncomfortable to do so (internal coercion). Habermas argues further that rules of rhetoric demand that everyone has an equal opportunity to speak. If a person desires to do so, then she should be given as much of an opportunity to speak as anyone else. A contradiction would arise if we did not allow others to speak in discourse since then it would be a “dialogue” with oneself, and thus no longer a dialogue at all but a monologue. However, one should not mistake the meaning behind this claim. That is, dialogue not only requires at least two people, but also that the people present are allowed to speak.

In brief, speaking logically, sincerely, and freely are all necessary conditions for genuine discourse. However, in order to have good dialogue, one need not be fully aware of these rules. As Gordon Finlayson (2005) explains, the rules of discourse are not written down explicitly, such as in chess, but are more like the “syntactical rules of language” (43). In other words, a discursive participant could follow these rules well, and thus be engaging in discourse, without being aware of the fact that she is doing so.

If we grant Habermas’s formal process to set the rules of discourse, then he is in a position to defend the two principles for discursively testing the validity or justification of moral norms. First, his “universalization principle” (Principle (U)) states: All affected by the discourse can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of everyone’s interests (Habermas 1990, 65). The principle of universalizability is a normative principle that tests the validity of moral norms by determining whether all affected by the discursive community can accept the norm and its foreseeable consequences. Very few moral norms will actually achieve

universal consensus. Nonetheless, if some were possible, we can imagine moral norms such as “do not murder” and “do not steal”.

Habermas (1990) warns us not to confuse Principle (U) with his other principle—Principle (D)—which says “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*” (66, his emphasis). This principle is meta-ethical, and it is the foundation for Habermasian discourse ethics. It states one cannot declare universal validity of a norm through reasoning by oneself, but must gain widespread agreement through discourse. For example, one may argue that “pornography is immoral” and have very good reasons for this position. Yet, if it cannot gain the assent of others as Principle (D) demands, then this person’s belief cannot become a binding norm, one that justifies a prohibition on pornography for all of us and not just for oneself. Again, like Principle (U), there is a strict requirement that “all affected” must agree to the norm for it to be binding. Given the fact of globalization, which means nearly all people around the world will in some sense be affected by many moral and political policies or interventions, coupled with the fact that the world has a wide range of conceptions of the good, it appears that reaching consensus is nearly impossible. Additionally, the norms that achieve such agreement will likely be rather obvious, for instance, prohibitions against murder.

1.3 Building on Habermas and Apel

Seyla Benhabib discerns two ethical assumptions made by Habermas in his articulation of the formal conditions for discourse and the justificatory principles they yield—what she calls the “principle of universal moral respect” and the “principle of

egalitarian reciprocity”. These two principles are a development from Habermas’s rules of discourse, and any genuine discourse must be constrained by these ethical principles. Unlike Habermas, who uses these two principles as abstract formal requirements of discourse, Benhabib employs them as substantive constraints on the dialogue. The principle of universal moral respect demands all competent speakers be given the opportunity to participate in the dialogue, and the principle of egalitarian reciprocity indicates that all those who have a chance to speak should be equally capable of raising new issues and criticizing positions.

Benhabib adopts and defends these two principles—universal respect and egalitarian reciprocity. One may argue that her interpretation of these ethical principles is biased in favor of a liberal understanding of respect and egalitarianism. In anticipation of this concern, Benhabib explains that these ethical principles are multiply realizable when implemented in different contexts. The way in which a person is shown respect in one context may differ from another. For instance, how we greet one another will be shaped largely by our social situation. The advantage of multiply realizing these principles is that they will then better accommodate moral and religious pluralism because people can display reciprocity in a way consistent with their moral or religious commitments without dictating how others should do so. Further, because “reciprocity” can only be understood between concrete others (and not abstract rational beings), these principles entail the commitment that “we are treated by others equally insofar as we are a member of a particular human group” (Benhabib 1992, 31).

However, Benhabib has far from fully endorsed Habermas’s version of discourse ethics. She argues that Principle U—which asks us to consider the foreseeable

consequences of our actions in trying to reach consensus—is subject to the “kinds of arguments that deontological rights theorists have always successfully brought against utilitarians” (Benhabib 1992, 35). She asks us to imagine a community that takes up the question of whether to “inflict unnecessary suffering”. The problem with Habermas’s version of discourse is that he cannot guarantee human rights will not be violated. Ultimately, Benhabib (1992) argues that we need “some stronger constraints about how we interpret ‘U’ for fear of regressing behind the achievements of Kant’s moral philosophy” (35). By achievements, she is referring to Kant’s commitment that human beings should not have their rights violated. The advantage of creating substantive constraints on the dialogue is that they help to generate norms that are not counter-intuitive, such as inflicting unnecessary pain.

Benhabib further argues that the problem with Habermas’s version of discourse ethics is that he appeals to abstract reasoners rather than concrete, particular reasoners. She likens Habermas’s discursive participants to Rawls’s agents behind the veil of ignorance, even though Habermas deliberately contrasts himself with Rawls.²⁹ Behind the veil, individuals are epistemologically and metaphysically prior to what makes them uniquely human. Agents ignore their particularities, which results in a homogenous human being, namely, one who is rational and self-interested. Benhabib argues that Habermas, like Rawls, employs the “ideal of impartiality” (1992, 169). She claims that Habermas’s version of discourse ethics assumes human beings are completely disinterested and impartial spectators, that is, individuals who jettison their emotions and biases in favor of the best argument.

²⁹ Habermas (1990) criticizes Rawls’s original position as unnecessary since “Practical discourse can also be viewed as a communicative process *simultaneously* exhorting *all* participants to ideal role taking...into a *public* affair, practiced intersubjectively by all involved” (198, his emphasis).

Following Habermas, Benhabib criticizes Rawls for engaging in a “*hypothetical* thought process, carried out singly by the moral agent or by the moral philosopher [instead of] an *actual* dialogue situation in which moral agents communicate with one another” (Benhabib 1992, 169, her emphasis). The human beings who are engaged in seeking moral justification are not ahistorical and apolitical, but rather embedded in particular social, political, and economic situations. Benhabib agrees with Habermas that a kind of reciprocity is required for genuine discourse, but she argues that “reciprocity” can only be understood between concrete others (and not abstract rational beings). These principles entail the commitment that “we are treated by others equally insofar as we are a member of a particular human group” (Benhabib 1992, 31). For Benhabib this means that Habermas’s two discursive principles—respect and reciprocity—need to be interpreted in light of particular worldviews, all of which may not support a liberal understanding of equality, for example. She often emphasizes the need to take an individual’s social and cultural situatedness seriously. That is, we ought not bracket the features that make us unique, including our religious commitments, gender, class, race and so forth; instead, these aspects shape who we are and the goals we strive to achieve.

Second, because Benhabib is not as overly ambitious to seek consensus as Habermas is, she is in a better position to localize norms. Drawing on Michael Walzer’s strong contextualism, she explains that within discourse “all meaning must first be interpreted and understood from the standpoint of its producers” (Benhabib 2002, 39). This points to the need for localized interpretations. The benefit of localized interpretations is to avoid a single definition of her ethical principles being imposed on those who find certain (often dominant) interpretations implausible, impractical, or

unhelpful. Benhabib advocates for substantive limits on the procedure by arguing, for example, that formally hierarchal worldviews that would grant some people (such as religious leaders) global epistemic authority. Ultimately, this could only be entertained temporarily because genuine moral discourse must allow all affected an equal opportunity to speak and to be heard as credible discursive participants.

I find Benhabib's account to be superior to Habermas's version of discourse ethics for three reasons. First, she argues that we need to place substantive constraints on the dialogue in order to mitigate the risk of generating counter intuitive norms, such as inflicting unnecessary suffering. Second, she attempts to offer a version of discourse ethics that makes the rules of discourse more contextual. As she says correctly, the principle of universal moral respect must be flexible enough to be interpreted in a way that can adapt to a given culture. Third, she is not overly committed to the value of consensus, but rather emphasizes the need to attain the right procedure to achieve a fair outcome. However, I am not fully convinced that Benhabib's account is the strongest possible version of discourse ethics. In the following section I will offer a number of challenges to discourse ethics as Apel, Habermas, and Benhabib have constructed it.

2. Challenges to Discourse Ethics

Discourse ethics has been charged with more criticisms than could be investigated here, but I would like to examine five of them closely: (1) an outcome cannot be trustworthy simply on the basis of the procedure used to produce it, (2) the charge of empty formalism, (3) various activist challenges, (4) that it is unable to offer substantive guidance, and (5) the charge that it is invidiously idealized. These criticisms are not

meant to completely undermine discourse ethics as a method of justification. Rather, I explore them in order to discern methodological desiderata that we ought to consider when articulating and defending a version of discourse ethics.

2.1 The Concern of Proceduralism

Discourse ethics is a procedural method of moral justification, which means that if the correct procedure is in place, then the recommended course of action generated by that procedure is morally justified. Martha Nussbaum argues that proceduralism cannot guarantee to generate good guidance since a procedure could in principle produce nearly any outcome imaginable. The primary target of her criticism is Rawlsian procedural justice, but the same criticism emerges for discourse ethicists given that they too argue the need to focus on generating the right discursive conditions, which in turn will generate norms that can be justified for all affected parties.

Nussbaum is concerned that despite how well a procedure is constructed, somewhere in the process it may go awry; thus, generating less than satisfactory outcomes. She argues that proceduralism does not offer us enough content to truly determine the justness of an action without a more substantive starting point. By contrast, her list of central capabilities at least says something about injustice and exploitation at the outset.

Nussbaum uses the example of a pasta maker to better understand the strength of her criticism. She asks us to imagine a pasta maker that has a flawless design and is built with the most pristine materials. It seems that it would guarantee to create the best pasta anyone has tried, assuming one had all the right ingredients. In fact, the host guarantees

her guests that it will be the best pasta they have ever tasted. She is confident in her assertion because all the necessary features to make the best pasta are included in her pasta maker. However, as Nussbaum (2006) says, surely the “guests want to taste the pasta and see for themselves. They will be inclined to decide for or against the machine on the basis of the pasta it produces” (83). In other words, it may be the case that the pasta will not meet the high expectations of her guests. There is no way to guarantee that her pasta maker will, in fact, make the greatest pasta. A guest would need to try the pasta first in order to draw that conclusion. The deeper point is that we judge the value of the machine on the basis of the quality of the product, so we already have an idea of good quality—a substantive standard—against which we judge the machine. Of course, constraints on the discourse might be so substantive that its outcome is nearly certain to produce the right norms, which then makes the proceduralist vulnerable to charges of begging the question by building substantive outcomes covertly into the procedure. However, as the pasta-maker example illustrates, those affected by the outcome of the procedure will determine whether or not the norms are successful after a decision has been made. Thus Nussbaum argues that the outcome, not the procedure, is the final arbiter to determine the justness of an action.

In sum, most versions of proceduralism attempt to identify the right constraints on the dialogue in hopes of achieving a just outcome. Nussbaum argues that ultimately we care about outcomes and will test them by independent criteria. So, we cannot, and indeed do not tend to, trust that an outcome is based simply on the procedure which generated it.

2.2 Empty Formalism

A second line of criticism is the charge that discourse ethics amounts to an empty formalism. There are two ways to understand the concept of “empty formalism” as it applies to discourse: what I call the Individual Abstraction Objection and the Utopianism Objection. On the one hand, the Individual Abstraction Objection, which is inspired by Hegel’s criticism of Kantian empty formalism, says that discourse ethics assumes an account of human beings as purely rational agents, and thus ignores particularities—that is, socio-economic factors, along with other individuating features such as one’s able-bodiedness and religious commitments that constitute an individual’s identity. Simply put, these assumptions about human beings lead to charges of empty formalism because meaningful guidance cannot be provided without first knowing one’s moral and religious commitments.

The Utopianism Objection, on the other hand, as formulated by Agnes Heller (1985), says this:

We cannot obtain any positive guidance from the Habermasian version of the categorical imperative. Rather, what we could get is a *substantive limitation* placed on our intellectual intuitions: we should only claim universal validity for those moral norms which we can assume would be accepted by everyone as valid in an ideal situation of symmetric reciprocity (7, her emphasis).³⁰

Heller is questioning the role of consensus used in Habermas’s model. In brief, Heller argues that Habermas fails to achieve universal validity on any moral norm. Heller (1985) concludes that if moral norms require that everyone affected by the outcome accepts them and their consequences, then “no norm could ever be universalized” (8). This criticism calls Habermas’s Principle (U) into question. That is, Habermas emphasizes consensus as the basis for moral justification, but as Heller argues, Habermas never

³⁰ Others have made a similar critique, see Wellmer (1991, 154-5) and Höffe (1990).

actually establishes a universal norm since genuine universal consensus cannot be achieved. To that extent, Habermas's model of discourse is utopian.

In order to address the Utopianism Objection, discourse ethicists must offer an account of discourse that does not rely so heavily on consensus. Benhabib (1992), for instance, argues that consensus cannot be a criterion of anything—truth or moral validity—rather it is “always the rationality of the procedure for attaining agreement which is of philosophical interest” (37). Unlike Habermas, who demands through Principle (U) that we reach a consensus on not only the norm itself but also its consequences, Benhabib argues that we need to place greater emphasis on the procedure.

Shifting the focus from consensus as an end-goal to the procedure may be unsettling for some, like Nussbaum. Emphasis now is no longer placed on “*rational agreement*, but more on sustaining those normative practices and moral relationships within which reasoned agreement as a *way of life* can flourish and continue” (Benhabib 1992, 38, her emphasis). This is not to reject the moral and political importance of achieving consensus. Instead, it redirects our attention such that the procedure is no longer fixated solely on achieving consensus, but rather on maintaining an on-going process of practical discourse that hopes to achieve some mutual understanding between discursive participants.

One should not mistake Benhabib's position as advocating for an endless dialogue in order to cultivate democratic abilities. There is a great deal of latitude between seeking mere consensus and discussing for discussion's sake. Benhabib advocates for neither of these positions. Instead, she calls for a reorientation of discourse whereby the participants are not fixated on achieving mere consensus, otherwise there is a fear that discussion will

end simply because that goal could not be achieved. Furthermore, because Benhabib recognizes the importance of developing discursive skills, they become a by-product of the discussion and not an end in itself.

I agree with Heller's criticism of Habermas's emphasis on consensus, and yet I am not fully convinced that Benhabib's position toward consensus allows her to escape the Utopianism Objection. Despite moving in the right direction by not demanding consensus, Benhabib provides no indication that she constructs a version of discourse that adequately addresses power inequities between dialoguers. It is likely, then, that her principles will be interpreted through dominant perspectives. Her view yields a different kind of utopian problem, namely, one that is an overly idealistic account of discourse that fails to adequately address power inequalities.

To avoid the charge of being utopian, we need a version of discourse ethics that not only abandons unrealistic expectations of universal consensus, but also provides substantive constraints to mitigate dominant perspectives from determining the outcome before the discussion. If there are no feedback loops and checks against those in positions of power, then those in marginalized groups will have no real voice. Benhabib's account of discourse, then, is incomplete since it is not clear that non-dominant perspectives are unable to shape the outcome of the debate.

2.3 Hegemonic Challenge

A third criticism of traditional versions of discourse ethics can be found in Iris Marion Young's challenge that activists would pose not only to Habermas's but also to Benhabib's version of discourse ethics. The central theme around these criticisms is that

the proposed deliberative procedures are exclusionary since the institutions that make policy decisions often preclude non-dominant voices from the decision-making process. Young cites the World Trade Organization (WTO) protests in the streets of Seattle in December 1999 as an example of people frustrated with being excluded from the greater democratic process. If one wants to save discourse ethics from the charge of exclusion, the institutions setting the agenda must be transparent with their discussions and be held accountable for their decisions.

However, the criticism of exclusivity cannot be about participation per se since discourse ethicists have the resources to address this concern. Habermas, for instance, argues that no consensus is genuine unless all those affected by the decision have an opportunity to shape the outcome, which includes questioning who should be allowed to participate, criticizing results, and raising new topics worthy of discussion. If everyone affected by the outcome is given a real opportunity to be a discursive participant, then one might wonder the extent to which Young's activist criticism is valid. Or, at least, that Habermas and Benhabib would agree with the claim that actual political institutions fail to satisfy the discursive rules, and thus both have resources to criticize these institutions for failing to yield warranted outcomes.

However, Young's criticism runs deeper. I call this criticism the Hegemonic Discourse Objection, to remain consistent with Young's language. The Hegemonic Discourse Objection states that even if true formal inclusion is achieved, a concern remains that the "majority of participants in such a reflective deliberative setting will be influenced by a common discourse that itself is a complex product of structural inequality" (Young 2001, 685). By "common discourse," Young is referring to cultural

stories, stereotypes, and generalizations about those who live in a given society. And, if that society is layered with structural inequalities, then these discourses become hegemonic; that is, people “think about their social relations in these terms, whatever their location in the structural inequalities” (Young 2001, 685). If marginalized peoples accept hegemonic narratives, then regardless of how many people from marginalized groups are allowed to participate, a deeper problem still exists for those people who think about themselves in a way that is less than those in positions of power.

Let’s consider an example from Young on hegemonic discourse that yields false consensus. She asks us to consider the discussion around poverty, which currently has received widespread agreement that it is the “failure of individuals to develop various skills and capacities necessary for inclusion in modern labor markets” (Young 2001, 686). This is especially troubling for Young since, regardless of whether the burden is on individuals or institutions for poverty, there is “no other way to think about poverty policy than as a labor market policy” (Young 2001, 687). So, everyone is permitted to participate in anti-poverty discussions, however, activists who want to challenge the hegemonic discourse that anti-poverty legislation must fit into wage employment will be dismissed immediately for being “irrational”.

In a commentary on Benhabib’s version of discourse ethics, Young discusses the implications of discursive participants deviating from dominant norms. She explains that hegemonic discourses assume a certain set of ruling norms, and if a person does not conform to them she is subject to harsh consequences, including marginalization or forced assimilation—that is, the inability to speak in a way such that she can be heard by others and taken seriously. Ruling norms for instance, according to Young, demand

“good workers are available to be on the job by 8:00 a.m. and can stay at work until 5:00 or 6:00...and they assume that political participants can be confident that when they speak their issues and idioms will be understood, if not always receive agreement” (1999, 416). Of course, this is deeply troubling considering it is more difficult for certain people to meet these demands than others. Because mothers have a greater burden of childcare responsibilities, they will likely have greater difficulties meeting ruling norms of the workplace than men, and more relevant people from marginalized groups may have their confidence undermined and so not present themselves persuasively.

Young’s quote above also reveals a further difficulty with ruling norms, namely, their lack of inclusivity. If a person deviates from a ruling norm, for instance in the way she dresses, speaks, or even expresses her spirituality, she will often be “disadvantaged in the competition for offices and positions, distributive benefits, or public attention and respect” (Young 1999, 416). So, even if all affected by a decision have an equal opportunity to formally participate, their position may not be deemed as credible because their way of life strays from the dominant norm. Stereotypes about certain social groups that emerge from larger structural inequalities have a direct impact on discourses like the ones Habermas and Benhabib advocate. For instance, manner of dress, lifestyle, and speech implicate people in credibility judgments and so impact their substantive inclusion in dialogue even if they are granted formal inclusion. Specifically, stereotypes often view women as overly-emotional and thus likely to overreact to a situation, and racist stereotypes work to the disadvantage of people of color insofar as they must “prove” they meet intellectual standards to be heard. So we can imagine a person of color who dresses

in a particular way, and despite the fact that he has been given the opportunity to participate in the dialogue, is not taken seriously by virtue of his appearance.

To address the above concerns, discourse ethics cannot simply call for everyone to have an equal opportunity to speak. Habermas is subject to this criticism because he emphasizes only the purely formal rules of discourse, such as ensuring free and equal participation. Benhabib also falls prey to this charge because, despite her commitment to concrete agents, she does not understand our concreteness in terms of social and structural power relations, nor does she consider the impact power relations have on discourse.

Discursive participants must be given a genuine opportunity to not only shape the outcome of the discussion, but also the norms that manage society and govern the rules of discourse. If the dominant ideology sets the rules of discourse just as they have for society, then of course we can expect that the same disadvantages in society will plague marginalized group members in the discursive arena. This criticism really points to the problems of Habermas's and Benhabib's version of discourse—that is, they generate discursive rules (based on respect and equality) that are biased toward those with the most epistemic power, and so substantively generate norms in favor of those in positions of power. This is not done intentionally, but rather due to the fact that their discursive methods do not account for how to correct for the impact of social inequality on discursive inequality.

The Hegemonic Objection is also intimately connected to the following Invidiously Idealized objection, insofar as the point of the former highlights that real world discourse is structured by social inequality as the norm and not as an exception. To

ignore this reality would be a way of creating an invidiously idealized speech situation by failing to generate discursive conditions that achieve substantive inclusion.

2.4 Invidiously Idealized Objection

A final criticism of discourse ethics is based on Alison Jaggar and Theresa Tobin's recent work on moral methodology. They argue that discourse ethics, as espoused by Habermas, is idealized. Onora O'Neill says a theory or assumption is idealized when it

ascribes predicates...that are false of the case in hand, and so denies predicates that are true of that case. For example, if human beings are assumed to have capacities and capabilities for rational choice or self-sufficiency or independence from others that are evidently not achieved by many or even by any actual human beings, the result is not mere abstraction; it is idealization (quoted in Jaggar and Tobin, 402-3).

Abstraction, according to O'Neill is a "matter of *bracketing*, but not of *denying*, predicates" (O'Neill 1996, 40, her emphasis). In other words, abstraction is a necessary part of theory construction whereas invidious idealization is more prone to running awry because it does not merely bracket features of human beings, but assumes a falsely idealized version of persons.³¹

Idealizations are not harmful categorically, especially for philosophers who are discussing essential features of a society in order for it to be considered just. However, not all idealizations are helpful, and, in fact, some may be quite dangerous. Jaggar and Tobin argue that classic discourse ethicists advocate an invidiously idealized strategy for moral justification. That is, because discourse ethics postulates egalitarian and

³¹ For a discussion of the ethical implications between "abstraction" and "idealization," see O'Neill (1987).

domination-free dialogue, it effectively brackets real-world diversity and inequality. This is problematic for three reasons.

First, they note that discourse ethics “rules out the epistemic hierarchies of some communities, such as elder wisdom and moral hierarchy of some religions” (Jaggard and Tobin 2013, 396). The trouble for discourse ethics is not simply in societies where its members accept the hierarchy, but also in societies that claim their citizens are all equal. Since discourse ethics assumes formal equality (that is, assume that all participants have an equal opportunity to criticize arguments and conclusions and raise new topics of discussion), it is not clear how it is applicable in situations of social inequality. I find this criticism to be especially concerning since, despite the fact that many communities espouse values of fairness and equality, upon further investigation we are able to identify groups who experience marginalization and oppression.

Maria Lugones and Elizabeth Spelman explain the trouble surrounding a nation’s claim to formal equality from a Chicana perspective writing to white/Anglo women. They explain, “We and you do not talk the same language. When we talk to you we use your language...But since your language and your theories are inadequate in expressing our experiences, we only succeed in communicating our experience of exclusion” (Lugones and Spelman 1983, 478). Language, as stated by Jaggard and Tobin, is a “public construct,” and yet it should not be forgotten that its absence is also publically generated. For example, if an individual does not have the language to articulate her concerns to members of her discursive community, then she will be unable to participate fully in the dialogue.

Second, Habermas, Benhabib, and other discourse ethicists acknowledge the pervasiveness of domination in discourse, but inequalities for them present a unique challenge. The outcomes generated by the discourse are valid only if the participants are able to speak freely and equally. If certain groups of participants are not given the genuine opportunity to be full dialogue members, then the outcomes produced are invalid. However, power abuses in discourse are ubiquitous, and so we need rules of discourse that can detect and correct for these, rather than rules that simply assert that discourse should be equal. Discourse ethicists then should seek discursive constraints to help achieve outcomes that give all participants a genuine, substantive opportunity to shape the outcome.

A final problem for discourse ethics, according to Jaggar and Tobin, is that it fails to recognize that hearing others is not an all-or-nothing affair, that is, either we listen well or fail in our attempt. Instead, they argue correctly that many times we listen with some success, yet fail to fully grasp what the speaker is saying. Because discourse ethics first demands its participants express their arguments, and then others choose to accept, reject, or question them, it assumes that participants are simply able to take on the viewpoints of others. This reveals a deep problem with discourse ethics, namely, that there is no discussion around how a speaker should be heard. This concern is exacerbated in relationships of inequalities where reversibility between the speaker and hearer is very troubling. As Iris Marion Young explains: “If you think you already know how the other people feel and judge because you have imaginatively represented their perspective to yourself, then you may not listen to their expression of their perspective very openly” (1997, 48-9). Thus it is all the more important for dialoguers to listen carefully and

attempt to understand what others are saying without projecting their own preconceived understandings on them.

In brief, Jaggard and Tobin suggest three criticisms of discourse ethics under the general concern of being invidiously idealized. First, classic discourse ethics with its strict requirement for epistemic equality dismisses the importance of epistemic hierarchies, which are integral parts of communities who draw, for instance, on elder wisdom and the importance of epistemic deference to members of epistemically marginalized groups. Second, domination and inequalities are ubiquitous in dialogue, and should not in themselves dismiss all discursive outcomes. We need discursive constraints that help us identify these and determine when they are influencing an outcome inappropriately. Finally, Jaggard and Tobin explain that listeners often do not just accept or reject another's argument, but understand parts of it and fail to realize others. This final point is significant because it recognizes that we often cannot simply take on the viewpoints of others, a situation which is heightened between interlocutors from different social strata, let alone diverse cultural backgrounds. Given the version of discourse ethics they address (viz., Habermas and Benhabib), I am in full agreement with their criticisms. I believe any theory of discourse ethics must be able to address Jaggard and Tobin's challenges, along with the others presented here.

4. Conclusion

Chapter 3 considers discourse ethics as a possible alternative method for justifying the capabilities given the problems identified in the previous chapter with the methods Nussbaum employs. I began with a brief historical overview that traced

discourse ethics from its originators, Jürgen Habermas and Karl-Otto Apel, to its contemporary advocate, Seyla Benhabib. I attempted to show the ways in which Benhabib and Habermas parallel and contrast one another. I then offer the following five criticisms of discourse ethics in Section 2: the dialogue cannot (1) produce a trustworthy outcome simply on the basis of the procedure used to produce it, (2) offer substantive guidance, (3) address structural biases and stereotypes, (4) offer substantive guidance, and (5) adequately accommodate diversity and inequality. I am sympathetic to each of these criticisms as they apply to traditional versions of discourse ethics. However, I am not convinced they apply to all versions of discourse.

The feminist critics of Nussbaum and the critics of traditional versions of discourse ethics converge on many of the same problems, including arbitrarily selecting others to generate norms, importing values that either do not provide substantive guidance or merely reflect those in social positions of power, and neglecting power dynamics and social inequalities that influence the discussion. This has led me to propose, as I will articulate in Chapter 4, the following set of four desiderata that a method for justifying capabilities should satisfy: (1) being cognizant of power dynamics, (2) remaining self-critical, (3) having a mechanism to revise one's list or theory, and (4) setting modest goals. These four desiderata are not meant to be exhaustive, but will shape my version of discourse ethics, and are used to evaluate the method of justification for a list of capabilities. I also believe that discourse ethics can be revised to better satisfy these desiderata than the method Nussbaum employs. In Chapter 5, I present Feminist Discourse Ethics as a more promising version of discourse.

CHAPTER FOUR: METHODOLOGICAL CRITERIA FOR A METHOD OF JUSTIFICATION

I am sympathetic to the central tenets of discourse ethics as espoused in the previous chapter; that is, as a procedure to justify (provide rational warrant for) a course of action to be followed by all those affected by the outcome. I also endorse the criticisms of discourse ethics in the previous chapter, and I believe that traditional prevailing versions of discourse ethics do not avoid many of the same criticisms I launched against Nussbaum's primary justificatory methods of reflective equilibrium and overlapping consensus. For instance, I argue that both Nussbaum's methods of justification and traditional versions of discourse ethics lack a mechanism to safeguard or mitigate concerns about the epistemic impact of asymmetrical power relations between interlocutors and neither adequately accommodates diversity.

The methodological criteria in this chapter are generated out of my criticisms of both Nussbaum and discourse ethics. I suggest the following methodological desiderata for evaluating a method of justification that can support the cross-cultural validity of a list: (1) How well does the method of justification direct people to be cognizant of power dynamics? A good method of moral justification should reveal, rather than conceal, potential abuses of power and not rationalize them. (2) Does the method have a mechanism to facilitate genuine revisions of one's list or theory? A good method of moral justification should encourage responsiveness to worthy reasons in an ongoing way that encourages revisions when demanded. (3) Does the method encourage people to remain self-critical, and, when warranted, to have an appropriate sense of epistemic humility about their own perspectives and reasons? A good method of moral justification

should have some way of helping people check their own epistemic and moral biases. And (4) does the method aspire to reasonable, modest justificatory goals? This fourth desiderata encompasses the scope of justification and whether a method purports to justify moral claims for all times, in all places, or for a justification that is more historically and socially situated. These four criteria are inspired by feminist criticisms of Nussbaum in chapter 2 and the shortcomings of discourse ethics from the previous chapter. This list is not meant to be exhaustive, but a good, minimal starting point for further discussion about the kinds of justificatory methods best able to achieve moral warrant under the conditions of diversity and social inequality that are the rule and not the exception in real-world situations of moral discourse. In fact, if the above desiderata are truly praiseworthy, then realizing them will require doing so under continuous scrutiny since their interpretations are never fixed, but always subject to revision.

1. Moral Justification

Moral justification provides rational warrant for a view or set of norms to a particular audience. The process of moral justification requires individuals to defend or supply reasons for their views, either through traditional premise-conclusion argument or other non-traditional forms of argumentation such as story-telling, narrative, and rhetoric.³² The goal is to show that the reasons in support of the claims being advanced are good reasons, and that they have the potential to be acceptable to, and should be accepted by, those who the view or norms under question affect (or who are being asked to accept the view or norm). A difficult task with justifying moral claims in a globally diverse world is actually providing compelling reasons that people who seem to share

³² For further discussion on non-traditional forms of argument, see Jaggar (1989) and Young (2000).

very little religious and cultural commitments, and who inhabit radically unequal social strata, can accept.

Martha Nussbaum claims that her list of central capabilities is global in this sense. She uses the methods of reflective equilibrium and overlapping consensus to argue that her reasons in support of the list are good reasons and are (or can be) compelling to diverse and unequally situated people. Her list is of particular importance since she attempts to justify it as a set of norms that are applicable to everyone, and in that sense, are said to be universal. She recognizes that people accept many different comprehensive conceptions of the good, and that people stand in relations of unequal social power. To address the concerns of different starting points and unequal social relations, Nussbaum justifies her list of capabilities through overlapping consensus and wide reflective equilibrium.

However, as I discussed in Chapter 2, I agree with feminist critics that Nussbaum fails to establish a truly universal validity of her list because she (1) imports her own values into her theory without having a procedure in place that either prevents this from occurring or enables her to recognize when it happens, (2) arbitrarily selects the intuitions and perspectives of others to “confirm” aspects of her theory, and (3) neglects significant epistemic consequences of the power dynamics that influence her interactions with others. In chapter 3, I have shown that traditional versions of discourse ethics, which ostensibly may improve on these problems, are in fact vulnerable to these same criticisms.

I argue that Nussbaum and traditional versions of discourse ethics go awry because they do not properly address the concern of interlocutors being situated in

unequal power relations, does not have a mechanism to continuously revise one's views, does not have sufficient guidance for being self-critical and epistemically humble, and they do not set modest enough justificatory goals; instead, expecting a theory to be all-encompassing or applicable to all people. I would like to highlight two significant points to keep in mind with these four desiderata. First, the above desiderata are subject to interpretation. This is a significant point because despite the fact that Nussbaum claims to address many of these desiderata, her understanding of them is inadequate, and we need alternative interpretations and more substantive ways of satisfying them. Furthermore, it could be the case that one or more of the above desiderata are not worth preserving, and perhaps others should be added. Second, in what follows I will elaborate on each of these desiderata, showing their inter-relatedness, for instance, revisability cannot be fully satisfied without proper attention to power dynamics.

2. Power Dynamics

This section will not discuss power per se, but a particular kind of power, namely power relations based on social identity. This kind of power relation has an epistemic impact on the process of moral justification—for instance, who is given authority to provide reasons, whose intuitions and reasons we see as credible, and who determines which intuitions or reasons are worthy and which ones we perceive as underdeveloped or corrupt. The concern surrounding power relations is especially important for our discussion since, as I have discussed at length, Nussbaum's social identity as a white, upper-class member of the privileged academic elite from a global superpower gives her a significant amount of power over most other potential interlocutors. She takes herself to

have properly formed intuitions and to be self-developed, thus when seeking out other peoples' perspectives she retains exclusive authority to identify which intuitions are worth preserving and to jettison those she believes are underdeveloped. Likewise, in regards to traditional versions of discourse ethics, some discursive participants have the ability to dictate a discussion simply given their power in regard to social standing.

“Social power relations” refers to power distributed on the basis of gender, race, class, sexuality, geo-political positioning, and other social categories, as well as their respective intersections.³³ Consider the following race-based example from Peggy McIntosh’s famous article, “White Privilege: Unpacking the Invisible Backpack”. McIntosh explains that while much of the feminist literature to date (1988) had focused on male privilege, she noticed a serious gap with white privilege. She compares white privilege to an “invisible weightless backpack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks”. In other words, those in positions of privilege and power are often unaware of the fact that they are afforded many advantages, and in that sense, the privileges are “invisible”. McIntosh offers a list of examples to highlight this phenomenon. For instance, a white person can go shopping without fear of being followed or harassed, be assured that her skin color will not work against her when she applies for credit, and that she can accept a job offer at an affirmative action employer without fear of having her co-workers suspect that that she got the job simply on the basis of her race. The point of these examples is that white folks do not have to think about these issues as they move about their daily lives.

³³ See Crenshaw (1991), Townsend-Bell (2011), and Collins (1986) for further discussion on the intersectionality (specifically of gender and race) between domination and oppression.

The above examples illustrates that, for white people, power and privilege can be manifested invisibly since whites are in positions of power and often do not recognize their status. Nussbaum seems vulnerable to this kind of epistemic blindness. For instance, she seems blind to certain aspects of the power relations that structure her interactions with her interlocutors, or at least fails to offer any substantively corrective measures to mitigate her potential abuse of power influences. She is geo-politically and academically more powerful than most of her audience, and as McIntosh's examples illustrate, being in a position of power accounts for the ways in which she may not realize how she dismisses views unlike her own. Nussbaum, on the contrary, argues adamantly that she is aware of the diverse backgrounds of her subjects, such as the Indian women. However, as I have argued, she has no mechanism in place to show how she mitigates potential power abuses between her and the Indian women. In fact, Nussbaum's way of proceeding in which she extracts quotes from them out of context to show how they support her list, and how she selectively decides which parts of her conversations with these women to share, indicates that the women she is interviewing are effectively silent interlocutors. Nussbaum gleans the information she wants from them, but we never really hear them.

Consider a different example. A student may desire to raise questions over her low grade to her professor. Regardless of how well the student justifies her grade, she is likely to accept the grade in fear that if she does not, the instructor may grade even harsher on future assignments or negatively affect her grade in some manner. So, in virtue of the instructor's position of power (not to mention other potential factors that may exacerbate their power dynamics), he is able to dictate the discussion in a way that may force the student to agree with him even if she has salient points to dispute her

grade. To be clear, I am not claiming that instructors should always and uncritically change the students' grades simply because they ask for it. The instructor has a level of expertise that ought to be respected, but he is certainly not infallible. Paying attention to power dynamics then includes the recognition of how the instructor is able to not only have an immediate impact on the student's grade, but also long term effects insofar as how he grades future assignments, treats her for the remainder of the term, and how his actions influence her participation in the class.

Like the instructor, if a development practitioner is discussing what is most central to the lives of people who are geo-politically disadvantaged, then an even greater burden has been placed on the practitioner to mitigate the inequalities between herself and those she is helping in order to receive more genuine feedback. She must ask questions in a way that will hopefully receive honest answers, and, just as importantly, be open to responses that challenge her position. A theorist may then seek cross-cultural support for her list of capabilities, for instance, through discussions with others that do not share her worldview. Specifically, Nussbaum has had conversations with people from India, including interviews with Vasanti and Jayamma; but again, Nussbaum did not address (or even acknowledge) the power inequalities between herself and the Indian women and the potentially distorting epistemic impact these power inequalities may have on the "evidence" Nussbaum claims to get from these conversations.

Alison Jaggar explains that the problem with ignoring power differentials for Nussbaum is that it undermines her very goal of having discussions that are "designed to exemplify certain values of equal dignity, non-hierarchy, and non-intimidation" (quoted in Jaggar 2006, 313). If Nussbaum wished to realize her own goals, then she should have

shown the ways in which she has attempted to mitigate power disparities, and then we (as readers) would be in a better position to accept the claim that her discussions with Indian women have supposedly “confirmed” most items on her list.

Social inequalities not only influence discussions between discursive participants, but also between theorizers. In the pursuit of reflective equilibrium, which is Nussbaum’s primary method of justification, a theorizer must consider other theories that challenge one’s own conception of justice. If a person is a dominant group member, then it is likely that many domains of his life have been unchallenged, and so one may not consider all genuine alternative theories of justice. As Elizabeth Anderson (1993) argues, wide reflective equilibrium often fails to “think through the implications of the social character of justification. [...] A person may be in personal wide reflective equilibrium but know that his attitudes are poorly developed as a result of inexperience, defective character, neuroses, or other problems” (111). In other words, it is possible for an individual to achieve wide reflective equilibrium, but that in itself does not demonstrate that his intuitions are rationally warranted. For instance, he may endorse racist beliefs and practices, and even challenge them against critics, but do so in a way that ultimately preserves his harmful intuitions.

Nussbaum attempts to mitigate Anderson’s concern by claiming that we should only consult the most “developed” intuitions as we strive for equilibrium. Individuals who have the most developed intuitions are those who have subjected them to great scrutiny and, in light of criticism, have refined them over time. I am not convinced this addresses Anderson’s critique. Instead, it raises new concerns over the exclusionary practices of the theorizer. If she labels certain intuitions as “corrupt” or “mistaken,” to

borrow Nussbaum's terms, then these intuitions can be easily dismissed despite their potential value. Furthermore, even if they are corrupt intuitions, there may be value in interrogating them. What is needed is not an additional exclusionary measure, but rather mechanisms for addressing the substantive social character of justification and the impact of social inequality on our practices of giving, hearing, and evaluating reasons.

I do not raise this criticism as a wholesale rejection of reflective equilibrium since I see value in its strategy as a method of justification. However, I raise this concern in order to show how power can influence an individual's defense of a given theory, even in quite subtle, hard-to-detect ways. As long as a theorizer is in a position of power and not forced to confront all relevant intuitions or perspectives, then he is more likely to merely confirm his own judgments and theoretical commitments. If a theorizer is merely confirming what he already maintains, then his theory lacks a mechanism to change in light of feedback that may prove valuable. Psychologists refer to this phenomenon as "confirmation bias," or the "unwitting molding of facts to fit hypotheses or beliefs" (Nickerson 1998, 175). If no one is in a position to challenge the theorizer, then he will continuously "confirm" aspects of his theory despite the fact that it may be riddled with problems. This demonstrates a need for theorizers to address power dynamics between themselves and their subjects as one way to help mitigate the concerns of confirmation bias. An acceptable method of justification, then, must have some way of identifying relevant power dynamics in a situation and some way to mitigate harmful ones.

3. Revisability Principle

The Revisability Principle serves two purposes. First, it requires that we subject all elements of our view to critical scrutiny with an openness that our views may be revised in light of them in an ongoing way. This need not occur all at once, but that all aspects of a theory are open to critical evaluation. Second, we must seek critical views from as many diverse perspectives to have a better chance at reflecting a broader understanding of the issues rather than a narrow understanding. To do this effectively, we must pay attention to power both within the views we seek out and between ourselves and those advocating for these alternative perspectives.

One way to mitigate the problems associated with inadvertently smuggling in one's own values and arbitrarily selecting others that may be used merely to confirm one's own beliefs is to build a mechanism within a theory that has the ability to criticize its own components. Jaggar sums up what I call the Revisability Principle. She writes, "moral reasoning operates through critical feedback between what we take to be our best methods and our best conclusions, continuously re-evaluating each in the light of the others" (Jaggar 2006, 311). In other words, all of our commitments, from the beliefs we hold to the strategies used to justify those beliefs, are subject to criticism.

A further commitment to revisability requires the theorizer to seek out many diverse perspectives (especially those who are traditionally marginalized) to question "whether any and all aspects of community norms, values, and practices...presume, reinforce, cause, or exploit power inequalities to the detriment of the less powerful" (Ackerly 2000, 76). To achieve genuine revisability, according to Ackerly, a theory must be committed to pursuing worldviews not shared with the theorizer, while paying close attention to the power dynamics within those voices (and their relationship to the

theorizer), and then use other perspectives as critical feedback to revise one's theory. This also reveals the intimate connection between revisability and power dynamics; that is, the former cannot be genuinely satisfied unless power is adequately addressed. A person cannot be in a position open to revising their views unless he is already critically aware of power dynamics, otherwise, the views of those in positions of power will continue to be reinforced.

At this point, one may question how Jaggar's suggestion is any different from reflective equilibrium. This is an important question to answer since, if there are no salient differences, then Nussbaum has already addressed the question of where her theory is revisable by subjecting it to the processes of reflective equilibrium. In fact, Nussbaum was correct in seeking out Vasanti, Jayamma, and other perspectives in order to determine whether her theory needed to be revised in light of their worldviews. She has always maintained that her list is "open-ended," "humble," and subject to revision. Her discussions with Indian women serve as a means to realize this goal. However, their stories were "primarily educational" insofar as, if Nussbaum would not have sought out their voices, she may have "missed important problems, or missed their [capabilities] connections to one another" (Nussbaum 2011b, 80). For example, she explains that the interconnectedness of bodily integrity and private property were only revealed through her discussions with Indian women. To answer the above question, Jaggar's points are not very different from Nussbaum's commitment to reflective equilibrium, but Nussbaum doesn't use diverse perspectives as part of reflective equilibrium. Diverse perspectives for Nussbaum are simply for her own understanding, to bolster and enhance her own view

and even fill any potential gaps in her theory, not as a potential source of criticism.

Meanwhile, Jaggard asks us to seek out diverse perspectives for the purpose of criticism.

Nussbaum allows for revisions that develop her proposed list, but not for revisions that may undermine it or offer serious challenges to the capabilities on her list or to her interpretations of them. In other words, the criticisms of her list cannot be substantive enough that their meanings become altered. For instance, bodily integrity entails “having opportunities for sexual satisfaction and for choice in matters of reproduction” (Nussbaum 2006, 76). Nussbaum interprets this capability as an absolute prohibition on female genital cutting, which she says is “ruinous to reproductive health” (Nussbaum 2005, 172). However, as I argued in Chapter 2, Theresa Tobin has shown that there are many kinds of female genital cutting and that they are performed for a wide array of reasons. I question, then, Nussbaum’s ban on all forms of female genital cutting (or as she says, “mutilation”) as running contrary to the capability of bodily integrity. This example demonstrates Nussbaum’s unwillingness to truly entertain challenges to her list.

There are two reasons to doubt whether Nussbaum has fulfilled the methodological demands of the Revisability Principle. First, while some capabilities may have been highlighted or called to Nussbaum’s attention through discussions, there is no evidence that new capabilities were adopted or existing ones jettisoned. This is not to say that she ought to adopt all possible candidates for her list, but it does require that she at least demonstrate the superiority of her list over the many challenges that have been presented to her. In Chapter 3, I discussed challenges to Nussbaum’s list. For example, Ingrid Robeyns (2003) argues in favor of the capability “time-autonomy: being able to

exercise autonomy in allocating one's time" of which she argues is missing explicitly from Nussbaum's list (72). Robeyns argues that missing a capability like time-autonomy leads Nussbaum's list to be "gender biased" because it "does not include care and household work, or time-autonomy" (73).

Nussbaum has also failed to fulfill the Revisability Principle because, as Jaggar (2006) observes, Nussbaum "rarely offers examples of disagreement, nor does she explain her criteria for including or excluding contested items" (314). Nussbaum's list has remained exactly the same since 2000, and the changes that were made between her earlier and later versions were minimal at best; thus, either she understands her list to be perfect as such, or she has not considered alternative lists. If the former, then she needs to demonstrate why specific capabilities are not included in her list that others have proposed (e.g., time-autonomy), or why she includes certain capabilities despite being challenged repeatedly to consider or revise them (e.g., assimilating "education" with "literacy"). The latter reveals the necessity of the Revisability Principle.³⁴

There seem to be at least two advantages of having a method of justification that is genuinely committed to the Revisability Principle. First, it helps individuals keep an open mind towards diverse perspectives and ultimately mitigate confirmation bias. As noted above, Robeyns, among others, has presented serious and well-known criticisms to Nussbaum's list. Despite their challenges, Nussbaum has remained steadfastly committed to her list as it was originally proposed and defended. This over-commitment to her list reveals her unwillingness to revise it. Second, the Revisability Principle shows how a

³⁴ Ingrid Robeyns is explicit that she differs from Nussbaum in a few ways, specifically in regards to the content of her list. For instance, Robeyns adds the capability of "time-autonomy," which means her account of "gender inequality includes inequalities in time allocation, leisure time, time-related stress, and so forth" (2003, 75).

proposal has incorporated good criticism from diverse perspectives. If a list of capabilities, for example, addresses potential criticism, it shows that a theorizer is at least open to alternative possibilities. The next step would include revising the list in light of warranted challenges, but in order to take that next step, it seems important that one has the proper epistemic posture; namely, the ability to be self-critical.

4. Self-Critical

The previous methodological desideratum has demonstrated the importance of subjecting one's position to critical scrutiny from outside perspectives with an expectation that such scrutiny will likely result in revisions to one's ideas. However, just as a theory can be criticized from other perspectives, a mechanism ought to be in place for the theorizer to question her own method of justification and theoretical commitments. I offer the desideratum of being self-critical in addition to the already established Revisability Principle, since one could in principle generate a theory that is revisable from someone other than oneself but lack the self-awareness and ability to call one's own method into question. In such cases, others would criticize a theorizer's beliefs and practices but this is a separate process from the theorizer being able to criticize her own commitments.

Brooke Ackerly draws on the Self-Employed Women's Association (SEWA), an organization for exploited self-employed Indian women workers, to illustrate what it means to be truly self-critical. SEWA, founded by Ela Bhatt, is a unionization that offers greater protection for individually contracted women who are otherwise taken to be

expendable.³⁵ The women were receiving minimal wages, employed under frightening working conditions, and had little to no health coverage before SEWA. The organization also helps many women secure microcredit loans to help start a business, among other things.³⁶ SEWA engages in the practice of self-criticism at two levels: organizationally and individually. On the one hand, it is committed to being self-critical of all its policies, including its most basic rules of who is permitted to join the organization. For example, when SEWA was originally developed, men were prohibited from joining, but after scrutinizing their own rules SEWA later allowed men to become members. This decision was reached because the addition of male members added the educative benefit of continuing to learn about government agencies and donor agencies, and bringing an outsiders' perspective to examine SEWA's own practices, but the organization did not grant men voting privileges. This example highlights the importance of self-criticism on an organizational level.

Now, let us examine the importance of self-criticism from an individual perspective. Maria Lugones's essay on playfulness and world-traveling provides an account of how to perform the task of self-criticism individually. She is interested in the problem of how to achieve understanding among people who stand in relations to each other of both diversity and power inequalities, and proposes the idea of playful world-traveling as a self-critical mechanism for striving toward a level of understanding between individuals who inhabit different worlds. First, Lugones (1987) says a "world" can be "an actual society...or *a* society given an idiosyncratic construction" (10, her emphasis). Second, playfulness entails a "loving attitude in traveling across 'worlds'"

³⁵ For further discussion on SEWA, See Bhatt (2006).

³⁶ Not everyone is as enthusiastic over microcredit loans as Nussbaum, for instance, see Kabeer (1999) and Poster and Salime (2002).

(Lugones 1987, 15). So playful world-traveling allows a way of epistemically inhabiting different social strata with an open mind because one has the proper epistemic and moral attitude. A loving attitude is one that centers the other, rather than the self, and is the opposite of an arrogant perception that forces the other's views and preferences to conform to one's own thoughts about them. Playfulness suggests a kind of not-too-serious willingness to try things out, mess up, and bounce back, as well as an openness to creative exchange and emergences.

Lugones emphasizes the need for us to be open to surprise and self-construction. Here, one embraces alternative understandings of oneself and the worlds one inhabits. For example, a person may occupy a world of being wealthy and another poor. Despite their different backgrounds, Lugones asks us to adopt a playful, loving attitude toward diverse others and the worlds they inhabit in order to attempt to understand those worlds. A wealthy person then may travel to a poor person's world and understand challenges they wouldn't otherwise consider, such as whether to visit the doctor (despite being ill) or eating healthy (even though it is better for oneself) because both run the risk of being very expensive. This attitude encourages us to understand those who are unlike ourselves, and do so in a way that is fun and loving. The poor and wealthy individuals must learn to navigate these spaces by not simply taking on the norms of a given world, but also by being open to the challenges and surprises that will arise within and between worlds. Lugones explains that we should not be worried about "competence, not being self-important, not taking norms as sacred and finding ambiguity and double edges a source of wisdom and delight" (1987, 17). In other words, holding steadfast to our beliefs is

wrong-headed because they may change as quickly as the social strata we inhabit. Norms that may have appeared to be essential to one's personhood may prove to be dubious.

The above example shows the ways in which playful world-traveling supports critical thinking about one's own views and reasons. It challenges our own perspectives by asking us to consider the way in which someone who inhabits a different world may view the same situation. Likewise, this attitude also encourages us to think critically about our reasons for why we believe what we do. The wealthy person may reevaluate the healthcare system, for example, by seeing the difficult decisions a poor person has to make before receiving medical attention.

Lugones notes an added bonus of being self-critical, namely, that it helps one better navigate through their myriad of worlds. If an individual is open to criticizing her theoretical commitments as well as the methods that justify those beliefs, then it seems fair to claim that others will be more likely to aid in her journey to uncover and defend her theory. Otherwise, she runs the risk of engaging in theory-construction merely by oneself, which then subjects her to the same criticisms revealed in the previous section. A further advantage of being self-critical is that discursive participants, for instance, would now be more likely to work in conjunction with others because they recognize the limitations of putting forth and defending a theory on their own.

Uma Narayan, a post-colonial feminist, poses a serious challenge to the incautious world-traveler, or as she calls it, to "border-crossing". Narayan convincingly argues that agency under oppressive systems is complex, and she cautions against labeling an individual as a victim merely because she appears to prefer forms of treatment many in the West would consider harmful (Kleist 2013, 687). Consider Narayan's example of the

Western fascination of *sati*, or widow-immolation, which she notes has been assimilated with traditional Indian culture. Narayan explains that the assimilation of *sati* and Indian women is a result of a “metonymic blurring of... ‘burnt Indian women’ variously going up in flames as a result of ‘their Culture’” (Narayan 1997, 101). Because *sati* is seen as a practice of something that happens “over there,” according to Westerners, it is a very misunderstood concept. So, while many Westerners have been very critical of *sati*, this practice has only been understood through a “filter” of media sensationalism, which has wrongfully led to the assimilation of *sati* and dowry-murders and allowed Westerners to ignore their own problems of domestic violence murders (Narayan 1997, chapter 3).

The above example illustrates the importance for a need to be self-critical, especially for those who are in positions of power and privilege because, as McIntosh’s examples illustrate, they are often blind to the way in which their power is manifested. This, in turn, may help them be open to alternative meanings. Narayan’s example illustrates that we should not engage in border-crossing, but Lugones’s playful world-traveling offers an alternative way to understand the example of *sati*. Border-crossing in an arrogant way would be when, for example, Westerners project their world onto those of non-Westerners and encourage them to not be “duped” by their culture. In contrast, playful world-traveling helps us gain a more accurate understanding of the issues women in diverse cultural positions face because it asks us to be open to a way of life different from that of our own. Just as the wealthy person gains insights via playful world-traveling into basic needs such as healthcare, those unfamiliar with the concept of *sati* would gain more critical awareness of it by situating it in a greater cultural and historical context, unimpeded by Western media biases. Thus, at the very least, even if a Westerner

cannot fully understand *sati* (which is fine given that playful world-traveling wouldn't demand one do so), he is able to better identify and understand his own limitations and biases.

Nussbaum would benefit greatly from the methodological desideratum of being self-critical since she would be forced, from the outset, to question the content of her list. I say "forced" because if this criterion is built into the theory, it requires the theorizer to confront possible biases in favor of one's own values and beliefs. For example, Nussbaum could reconsider her interpretation of education, which requires being literate. Even if she rejects those who believe education is not a value for their community (at least in the way espoused by Nussbaum), she would be open to the possibility of alternative meanings. In other words, a commitment to self-criticism as an integral part of a method of justification will be more likely to have a kind of healthy skepticism towards toward one's own views that mitigates the kind of dogmatism Nussbaum's approach suffers.

Lacking this methodological desideratum, then, is part of the reason why we should call the ways in which Nussbaum uses the justificatory methods of reflective equilibrium and overlapping consensus into question. In regards to reflective equilibrium, she determines not only whether her intuitions about human dignity, but also the intuitions of those who do not share her worldview of human dignity, are in harmony with principles of justice. This is problematic because she ultimately dismisses the intuitions of those who disagree with her as "corrupt" or "underdeveloped". Because she lacks the ability to be genuinely self-critical, there is no real opportunity to revise her commitments. Thus her list, which she seeks as an object of overlapping consensus, also

lacks the opportunity to be wholly inclusive because it never truly represents a universal list, but that of Nussbaum (or those like her) alone. This also helps explain the interconnectedness of self-criticism and revisability; that is, genuine revisability seems to require some level of self-criticism.

Ackerly is correct when she claims that it is especially important to be self-critical when putting forth universal values, as in the case of Nussbaum's list of central capabilities. Ackerly writes, "although western women have been increasingly genuine in their use of violence against women as a universal value," it must be "supplemented by a call to self-evaluation" (148). One may be well-intentioned in an effort to eradicate violence against women, however, the way in which one interprets what it means to be subject to "violence" will be manifested differently in different contexts.

The hope of these first three methodological criteria is that they work in concert with one another. For instance, they all require epistemic humility: the ability to recognize our limitations as individual knowers. This, in turn, will hopefully lead us to be more self-critical and open to criticism from other perspectives. A theorizer can receive feedback on her belief system, but if she is unwilling to genuinely revise her position in light these criticisms, then the Revisable Principle is for naught. Of course, I am not claiming that we ought to change our beliefs at the moment of scrutiny; I am insisting, however, that without being open to revision our beliefs become dogmatic. Taking other people's criticisms seriously demonstrates respect for them as interlocutors, something Nussbaum claims that we must do. In other words, as a theorizer receives feedback from others, while scrutinizing his own beliefs because he recognizes his fallibility, he must also be cognizant of the power dynamics between himself and those who are contributing

to his theory—both critics and supporters. Since in practice, satisfying these methodological desiderata can go awry, I believe it is important for theorizers to set modest goals; not to mention that seeking a single, global ethic as characterized by Nussbaum is in its own right an arrogant search.

5. Modest Goals

The three desiderata of adequacy discussed in this chapter have shown the ease with which a theorizer can be mistaken—whether identifying the best method of justification or attempting to apply that method. For example, we often misinterpret literature, fail to recognize key elements in various theories, dismiss others who should be consulted, downplay or ignore the magnitude of social inequalities, and privilege our own perspective. The hope is to mitigate these attitudes and behaviors as much as possible, which is why I call for methods of justification that facilitate theorizers in being cognizant of power dynamics, create a mechanism for a theory to be genuinely revisable, and ensure a theorizer is self-critical. I offer another methodological criterion that is meant to complement these, namely, putting forth modest goals.

There are no strict accounts of what constitutes a “modest” goal, however two points may be helpful in its implementation. First, a theorizer should be modest about the level of certainty a method of justification can yield. We should recognize that regardless of how well conceived and applied a justification may be, it is prone to error. So we should always hold a humble status for the claims we justify, and this is all the more so when we are claiming to offer justification, for example, for a wide scope of people diversely and equally situated. A justification should not seek to provide *foundational*,

rational warrant for all people in all times, which is often the goal of a theorizer. Nussbaum, for example, uses a method of justification that is meant to be all-inclusive—namely, wide reflective equilibrium—in that it is intended to be able to provide justification for the capabilities to all people at this point in time. Recall, reflective equilibrium is a method of justification that seeks coherence between (a) an individual's considered moral judgments, (b) sets of principles, and (c) background assumptions. Wide reflective equilibrium not only considers one's own judgments, but also competing theories. As I presented in Chapter 1, Nussbaum uses wide reflective equilibrium to demonstrate that the capabilities approach is more choice-worthy than competing theories of justice, including utilitarian desire-satisfaction and Rawlsian social-contract theory.

However, Jaggar argues correctly that no method of justification is entirely foolproof since “even a generally reliable method may be misused by the person who employs it. Moreover, intuitions that are initially plausible may turn out, on further investigation, to be mistaken” (Jaggar 2006, 311). Here, she calls our attention to the seemingly obvious point that regardless of the theorizer, the application of the theory may be applied wrongly. Nussbaum may be a great theorizer who is attempting to be truly inclusive by considering various methods of justification, comprehensive doctrines, and competing theories. Despite an attempt to deter potential concerns, the ways in which her theory is implemented may yield unintended consequences.

Keep in mind that I am not making any claims about the intentions of the theorizer; so, following the above example, Nussbaum may be a well-intentioned theorizer who (implicitly) endorses neo-colonial beliefs and practices. Furthermore, because mistaken intuitions can arise in many sources, including critics and supporters of

a theory, not to mention the theorizer, no method should be assumed to be free from error. Even our most refined intuitions may be mistaken because not all perspectives were consulted, or we did not consider the way in which certain perspectives challenged ours. This explains why we should strive for neither an error-proof theory nor pretend that we have constructed and defended one.

Second, I seek modesty in the outcomes themselves and in the scope for which we are able to offer justification. If we are modest about our methods of justification, then the justified norms should also be modest. So for capabilities, it seems important to acknowledge that when a theorizer generates and defends a list that she recognizes that it is *a* list. That is, it is one among potentially many competing lists, not *the* single, universal list. To emphasize this point, Ackerly calls her list of capabilities “guiding criteria” since it “functions as criteria for social criticism intended to work together with deliberative inquiry and skeptical scrutiny as a cohesive method of social criticism” (113). Because she has methodological criteria built into her theory that allows for genuine revisions, Ackerly can call her list a genuine “work in progress”. The list one endorses should be a starting point for further discussion, not the end to which all lists must conform.

In contrast, Nussbaum proposes a universal list that is meant to cover all peoples in all contexts in order to avoid the charge of relativism. She fears that if we produce multiple lists for various contexts, then there will be no general standard by which we can judge whether someone is harmed. However, my concern here is not about whether to generate a single universal list or multiple lists, but rather ensuring that whatever lists we do produce are modest in nature. So, as Ackerly notes, we should recognize that our list

is merely one among many. I advocate for multiple lists based on the need for modesty for two reasons. Keep in mind, part of the project of a global approach to ethics may be discerning how to meet more localized moral and political needs that nonetheless have origins and consequences that extend beyond national borders given the interconnectedness of global relationships. First, a commitment to modest outcomes says that, given the complexity of moral and political reality, it is likely that we will need more than a single list to address diverse contexts and situations. Second, given the same complexity noted in the first point, it is unlikely that we will be able to offer a global justification for any list, let alone providing compelling reasons to all peoples for a single list. That justification will itself always be more localized and tailored to particular contexts and peoples and their moral and political needs.

6. Conclusion

The four methodological desiderata in this chapter — to be cognizant of power dynamics, to have a mechanism in place to allow for revisions to the theory from other perspectives, to be self-critical, and to put forth modest goals—are meant to help theorizers decide which methods of justifications are most beneficial and how to use them. I am certain that more criteria could be uncovered, especially if one consults more perspectives, and thus my list is not meant to be exhaustive. However, it does provide enough guidance for theorizers to mitigate some of the concerns noted in this chapter and the previous one.

In the following chapter, I will argue that discourse ethics as a general approach to moral justification is a better approach than those Nussbaum employs because it

requires dialogue with all those affected by the norms under discussion, but also that we need something superior to traditional versions of discourse ethics due to the fact that they are vulnerable to the same problems to which Nussbaum's monological methods are vulnerable as I discussed in chapters 2 and 3. I believe a feminist inspired version of discourse ethics is more likely to satisfy the desiderata outlined in this chapter.

CHAPTER FIVE: FEMINIST DISCOURSE ETHICS

Discourse ethics, as espoused by Habermas, Apel, and Benhabib, claims that a moral norm is rationally justified if all affected by the outcome could accept it under conditions of free and equal discourse. However, as I have argued in the chapter three, these conditions are rarely met, and so traditional forms of discourse ethics seem ultimately ineffective as a method of justification and are not viable as an alternative method for justifying the capabilities as a cross-cultural, gender sensitive tool for assessing justice. I argue that we need to abandon the formal equality of Habermas in favor of substantive equality, one that is an explicitly feminist version of discourse ethics. In this chapter, I articulate a feminist version of discourse that I propose as a method to justify capabilities as well as applicable to real world situations. I attempt to do this through what I call “Feminist Discourse Ethics,” (FDE) which is largely indebted to Alison Jaggar’s “Feminist Practical Dialogue” (FPD). The end of this chapter will illustrate the advantages of FDE over Nussbaum’s methodologies through a case study on the Bangladesh Rural Advancement Committee.

FPD is a version of discourse ethics that is empirically rich (due to the fact that it draws on discursive norms from actual feminist activist groups), pragmatically valuable, and committed to feminism. Jaggar’s version of discourse is more pragmatic than Habermas’s idealized version because it begins with real world actors, problems, and responses to those problems. Furthermore, FPD is feminist insofar as it is committed to ending women’s subordination. It also incorporates both traditionally “feminine” traits such as caring, reciprocity, and sharing intimate feelings, and prioritizes concrete

experiences over idealized abstract subjects and “masculine” traits, such as the values of equality and fairness.³⁷

1. Feminist Practical Dialogue

I begin by outlining Alison Jaggar’s version of Feminist Practical Dialogue, from which I build my account of feminist discourse ethics. Jaggar grounds her version of discourse in the discursive activities of contemporary consciousness raising groups, including Feminist Healthcare Activism, Feminist Antimilitarist Activism, Feminist Pedagogy, and African American Women’s Dialogue. Because FPD is situated within an activist framework, as opposed to an academic one, she believes her theory is “empirically and conceptually richer than that found in many philosophical theories” (Jaggar 1995, 137).

Drawing from these activist groups, Jaggar articulates a working account of feminist practical dialogue aimed at addressing some of the problems with traditional versions of discourse ethics mentioned in the previous chapter. Specifically, she presents norms that are more likely to yield substantive equality and respect among participants, especially as they stand in relations of unequal social power. She argues that discourse should (1) begin with narrative as opposed to argument, (2) adopt practices of moral deference to those with less social power, (3) emphasize and practice listening, (4) engage nurturing rather than adversarial modes of discourse, and (5) seek consensus.

³⁷ It is of note that FPD is committed to the values of equality and fairness insofar as it strives for the moral equality of women to men. FPD attempts to understand how substantive equality and fairness might be achieved under those conditions and looks to how feminist communities have worked toward this. To correct real world inequalities, then, FPD has prioritized the values of concrete experiences over idealized subjects.

Feminist Practical Dialogue is an intersubjective method of moral reasoning that begins with first-person narratives, which are taken to be opportunities for individuals to discuss and reflect on their moral and political experiences. This not only provides dialoguers the opportunity to speak, it also allows other participants to learn from that person's experience and critically reflect on their own lives. Narratives have the ability to link experiences relationally to other aspects of a context and so have the potential to be illuminating, that is, to reveal aspects of a situation that might be overlooked by abstract theorizing. However, they do not encompass the totality of the dialogue but only serve as a starting point since narratives often conflict with one another and so require further critical scrutiny.

One problem with narratives simpliciter is that not all experiences are treated equally. For example, women tend to be seen as "over-emotional" and so their narratives (or arguments, more broadly) are often taken less seriously than men's perspectives. To address this concern, Jaggar argues in favor of "substantive equality" over "formal equality". The formal equality in discursive interactions, advocated by both Habermas and Benhabib, mandates that all participants have an equal opportunity to question others' positions, to offer arguments of their own, or to raise a completely new topic of discussion. However, as I argued in chapter three via Iris Marion Young's Hegemonic Discourse Objection, a discursive model that recommends that all participants have the same opportunity to speak cannot address the greater systematic problem that not all views receive equal uptake. In contrast, requiring norms that generate substantive discursive equality means giving "socially disempowered women...special respect, but it does not assume that any woman is necessarily a moral expert or authority" (Jaggar 1995,

129). In other words, some women's (and other members of marginalized communities) experiences are given respectful consideration insofar as they ought to be taken especially serious, but not as the final word.

Second, Jaggar, unlike her predecessors, recognizes that listening is essential for effective discourse. Listening is not a passive process whereby the hearer simply takes in the information given by the speaker, but an active engagement between participants. Moreover, she argues that the best atmosphere for speakers and hearers to flourish is "nurturant" rather than "adversarial". Jaggar attempts to avoid language that sounds like "litigation," as we find in Rawls's discussion of "parties" behind the veil of ignorance, for example. In contrast, participants within FPD do not seek to overpower one another with strong rational argumentation, but "support each other in reevaluating their initial conceptions of themselves and their experience, their history and culture, their relations to each other, and their perceptions of conflicting interests" (Jaggar 1995, 133). In other words, rather than basing dialogue off war metaphors (e.g., battling it out) and confrontation, FPD advocates cooperation and understanding.

Keep in mind that while Jaggar's feminist practical dialogue is considering dialogue between feminists, my project is much broader in scope and aims to include people who may not have these shared starting points. So I would not want to mandate nurturance between discursive participants since those who inhabit less social power may need the space to be adversarial and still be taken seriously. The larger point that I am sympathetic to is Jaggar's commitment to creating a discursive atmosphere likely to enable diminished social groups to express themselves, which will often require dominant

group members to take a more conversational attitude that tends to be nurturing as opposed to adversarial.

One should not misunderstand the commitment to nurturant attitudes as a rejection of disagreement. The discussion amongst participants will be rigorous, and they may be frustrated as their positions are undermined. In fact, disagreement has the advantage of encouraging speakers to reconsider their own experiences. So while disagreement is not pursued for its own sake (as it appears with traditional forms of discourse), it seems inevitable in almost all discussions and salutary. For instance, compassionate listening might start with recognizing why a person feels the way she does, but then suggest other interpretations of that experience. Moreover, respecting one's interlocutors requires critically examining their views and not accepting them blindly. For example, a woman who expresses frustration over sexist jokes at work may be told that she is being overly sensitive and simply needs to relax and "lighten-up". In such cases, it would be important to mention that we can understand her interpretation of that experience in light of living in a patriarchal society propose that her concerns are valid, and that she is not, in fact, being hypersensitive. This is not to claim that oversensitivity cannot occur, or that it may even cause an understandable amount of paranoia.

The goal of FPD is consensus, but like Benhabib, Jaggar recognizes that consensus may be unattainable. In such instances, Jaggar claims we ought to suspend discourse temporarily although, as soon as the opportunity arises, the group must return to discourse in hopes of achieving action. An obligation to sustaining discourse is vital for FPD because it's ultimately a commitment to a method of justification that can yield

action-guidance. Nonetheless, Jagggar states that moral deliberation is valuable in itself as it helps develop responsibility, self-discipline, respect, cooperation, struggle, courage, caring, loyalty, self-knowledge, imagination, sensitivity, and empathy (1995, 136).

2. Procedural Constraints/Conditions for Inclusive Discourse: Building on Jagggar

There are a number of procedural constraints we can discern from Jagggar's account of discourse ethics, which include: (1) encouraging first person narratives, (2) providing moral deference to socially disadvantaged groups, (3) hearing virtuously, (4) developing nurturant attitudes, and (5) understanding consensus as process. In general, I am sympathetic to each of these points, but I believe each can be elaborated and extended. These elaborated discursive constraints can serve as guidelines to help establish discursive communities that are more likely to secure cross-cultural validity and gender sensitivity of the capabilities.

2.1 Non-traditional Forms of Speech

Whereas Jagggar defends the value of first person narratives as discursive starting points, FDE builds on this by suggesting that a variety of non-traditional forms of speech be encouraged. This is a vital commitment as it provides access to a broader range of relevant "reasons" and enables more relevant participants to participate by allowing people to communicate in ways they may be more comfortable with (such as those that do not require formal training in argumentation or high levels of education). Narrow accounts of rational speech, according to Iris Marion Young, confine speech to "universalistic, dispassionate, culturally and stylistically neutral arguments that focus the

mind on their evidence and logical connections, rather than move the heart or engage the imagination” (2000, 63). The history of Western philosophy has been obsessed with offering loquacious and often impenetrable arguments. Socratic dialogues, for instance, discuss valuable topics such as defining virtue and justice, and the immortality of the soul, and yet they are riddled with dialoguers attempting to quibble with nearly everything their interlocutor says. For example, the actors in Platonic dialogues continuously demand clearer and more precise arguments and definitions, that is, more logical ones. Of course, defining terms is helpful for any argument. However, if so much emphasis is placed on these activities, to the exclusion of other modes of reasoning and other ways of advancing claims, then narrowly defined rationality will have a stronghold on discursive communities which may disadvantage people from marginalized social groups.

Academics have the privilege to work through these arguments carefully, and I have no qualms with preserving this pursuit within our discipline. However, the way in which this can be used to manipulate others in real world moral discourse is very troubling. This is one of my biggest concerns with Nussbaum’s approach; namely, that she uses her privileged position of being a Western academic to her advantage by marginalizing (however inadvertently) her interlocutors. Through her methods of reflective equilibrium and overlapping consensus, she theorizes at a very high and abstract level on her own. Her monological method of moral reasoning allows her to imagine criticisms to her position, which often come in the form of straw-person like arguments. In order to address my straw-person concern, Nussbaum would need to take “non-academic” criticisms seriously, such as her discussions with Vasanti, Jayamma, and

members of the Self Employed Women's Association. At best, as I demonstrated in Chapter 2, she asserts that those who do not appreciate her list lack a full understanding and appreciation for them. Taking non-academic perspectives seriously requires legitimizing non-traditional forms of speech.

As Iris Marion Young explains, the "norm of 'articulateness' devalues the speech of those who make claims and give reasons, but not in a linear fashion that makes logical connections explicit" (2000, 56). In practice, individuals with critical reasoning skills (which tend to be people from educated backgrounds) are able to discern logical fallacies and gaps in arguments. The moment an individual identifies flaws in another's argument, depending on how the criticism is presented, the targeted person is at risk of being silenced. Despite these concerns, we would not want to simply ignore mistaken logic/reasoning. So how the mistake is presented, and determining whether the mistake matters, will be crucial to ensure the person who made the error is not silenced.

FDE allows so-called non-rational "arguments" to play a role in discourse, which includes greetings, rhetoric, narratives, and emotional expressions in general. For instance, subordinate peoples who pay a disproportionately high price for maintaining the status quo often experience "conventionally unacceptable" emotions in response to the status quo, which Alison Jaggar calls outlaw emotions (Jaggar 1989, 166). For example, if a woman is subjected to sexist jokes, she may become uneasy, nervous, or even scared. However, because the socially appropriate response to sexist jokes is to laugh, the woman feeling outlaw emotions is unlikely to articulate her experience for fear that she has an inappropriate response, and may even begin to question her rationality. Jaggar argues that outlaw emotions may have important epistemic weight because they can highlight

systematic injustices that might be overlooked, but sharing these experiences does not follow the traditional premise-conclusion form; thus, FDE broadens the kinds of speech people are permitted to use in discourse to include things like communicating their experiences of outlaw emotions as a critical moment for discussion, and a way to actively seek marginalized perspectives.

In addition to encouraging the expression of emotional experiences, Young offers three non-traditional forms of communication that ought to be included in discourse: greeting, rhetoric, and narrative. Greeting is the “simple” acknowledgement of another. This can be performed when one first meets another with a “Hello” or “How are you?”, or as one is leaving by saying “Good bye” or “See you soon”. Greeting opens up an individual to being vulnerable since she is now attempting to build a “bond of trust” necessary to “listen and take responsibility for her relationship to her interlocutors, and at the same time that it announces her distance from the others, their irreducible particularity” (Young 2000, 59). Greeting is necessary, though not sufficient, for rational dialogue as it contributes to creating space for genuine dialogue.

The second form of communication that FDE accepts is rhetorical speech, which is often contrasted with rational speech. Rhetoric tends to be defined as manipulative speech which is used as a means of persuasion, unlike rational speech which is filled with substantive arguments in their logical sequence and delivered in a dispassionate manner. Rhetoric has been viewed suspiciously since its misuse can manipulate audiences, especially those who are not trained to identify logical fallacies.

Young identifies four aspects of rhetoric: (1) various emotional tones such as anger, frustration, and joy, (2) many figures of speech including similes, metaphors, and

puns, (3) expressing oneself not merely in speech, but also (for instance) through demonstrations, sit-ins, symbols, and banners, and (4) paying attention to the particular audience, their history and commitments, to best orient one's speech (Young 2000, 65). These four aspects of rhetoric can be extended. For instance, one could extend (3) to include other forms of artistic expression such as interpretive dance and poetry. Rhetoric has the advantage of realizing an FDE goal of treating others as concrete individuals since rhetorical speech is aimed at particular audiences with particular histories. However, that does not address the above concern of abusing rhetoric. Because FDE follows FPD in that being a supportive discourse participant entails challenging fellow group members, rhetorical discourse riddled with fallacies and harmful speech will be subject to criticism like any other statement.

Finally, like Jaggar's Feminist Practical Dialogue, Feminist Discourse Ethics begins with individuals sharing first-person narratives.³⁸ Narratives entail individuals sharing their experiences, which often includes providing emotional responses to a given situation. Narratives have facilitated women's abilities, through consciousness-raising groups, to realize that their experiences are shared with other women. As I noted with FPD, narratives have the ability to provide the listener with an insight into the experiences of diverse others whose experiences might not be otherwise available to the listener. However, as Laura Black argues, story-telling is not simply someone discussing "personal reasons", since that reduces the speaker's point to mere idiosyncrasy and thus

³⁸ Very few would outright reject the use of stories in discourse, but their disdain for them comes under the guise of "acceptable outcomes". Joshua Cohen, for instance, accepts narratives in the discourse in order to be inclusive, but his greater commitment to rationality is apparent. He says "acceptable *outcomes* of a deliberative process... can be justified given the requirements on finding reasons acceptable to others" (Cohen 1996, 105, his emphasis). A similar point could be charged to Amy Gutmann and Dennis Thompson (1996) since they argue that even "extreme nondeliberative methods may be justified as necessary *steps* to deliberation" (135, emphasis added).

is not a real object of discussion; if that were the case, then any criticism of what the speaker says will appear to be an attack on her as a person. Furthermore, she argues that accepting stories as reasons “fails to recognize how storytelling involves identity negotiation and the potential for perspective taking” (2008, 110). So story-telling is neither reducible simply to the individual nor should it be understood as a universal experience, but rather as a way to illustrate how narratives and stories help connect features of a person’s experiences with others. It is in this way that her story might be extended to relate to the experiences of others who are similarly situated.

These stories have the ability to undermine and correct pre-given stereotypes. For example my father, who barely graduated from high school, was born and raised in the same rural farming community he lives in today. He is not politically well informed, as made apparent by not knowing the current vice president of the United States. However, he is caring and inquisitive. During a recent encounter, my father met an individual from Iraq who started discussing his life back home. My father was amazed to learn about the native Iraqi’s experience. Most notably, I remember him telling me emphatically and sincerely: “Chad, you couldn’t imagine what life is really like in Iraq. Did you know they had highways?” This moment may appear ignorant to many who are already aware of this. However, I find this story to be very powerful insofar as an individual sharing his experiences of Iraq was able to dispel my father’s stereotypical generalization of a region that he would never have cared to know about or change. He is now in a position to critically evaluate his preconceived notions of Iraq (and what he sees as “all those countries”) and its citizens. He certainly would not have gained this understanding from books or the media, especially since the latter often reinforces his preconceived notions

and the former may not be accessible to him given his level of education. I am confident that my father's experience of hearing a narrative about Iraqi life from a person who was raised in Iraq shifted his thinking about the people of Iraq in a way that more traditional forms of argumentation and speech could not.

One could argue that, in principle, he could have received this information from a plethora of media outlets, including television, Internet, newspaper and so forth. I do not deny the feasibility of this option. However, active conversational exchanges between dialoguers who share in narratives from experiences of their lives have the ability to make individuals reflect on their own lives and the lives of others in a way that other sources cannot. Furthermore, my father's disposition as a caring and inquisitive person is certainly beneficial as well. He was able to listen in a way that someone else might not be able to, including academics (like Nussbaum) who may be more inclined from the outset to view ordinary people (i.e., non-academics) as having very little to offer in terms of epistemic value. This example is meant to illustrate that the power of narratives should not be understated.

To illustrate the above point, let's consider Nussbaum's steadfast commitment to the capability of education. She argues that, as a basic good, it should be guaranteed to everyone. A necessary condition of education for Nussbaum is literacy since it functions as a fertile capability, that is, a capability that can lead to the fulfillment of other central capabilities. Given high illiteracy rates in Bangladesh, Nussbaum concludes incorrectly that Bangladeshi people do not value education. However, as I presented in Chapter 2, Brooke Ackerly shows that after speaking with 800 rural Bangladeshi women that they do understand the value of education, but that it is also an unrealistic option for most

since it is too expensive. This points to the fact that, like Ackerly, serious attention to first person narratives requires rethinking the capability of education, or at least the resolution of that kind of tragic dilemma advocated by Nussbaum.

Some philosophers have rejected the idea that narratives and nurturant attitudes might be useful discursive methods. For example, Tibor Machan's review of Jaggar's articulation and defense of Feminist Practical Dialogue questions the use of narratives, emotions, and nurturant attitudes in striving for justice. He argues that Jaggar's FPD asks us to "talk about how [we] feel, not what [we] think" (Machan 1997, 61 n.2). Following the Kantian project of disembodied rational agents, Machan calls on us to use our rational faculties to make an argument rather than relying on our feelings, which, in themselves, have no political basis other than clouding our ability to make a sound moral and political judgment.

I contend that Machan is deeply mistaken. His mode of reasoning to understand the world assumes a purely argumentative framework by displaying logically valid arguments in traditional premise-conclusion form. This method of moral reasoning is so narrow that it fails to capture the various ways "common folk" communicate with one another. We need an account of moral reasoning that is usable and inclusive by embracing many forms of communication. The use of storytelling, for example, has the potential to expand participants' political and social awareness in a way that purely rational discourse cannot.³⁹ Again, my father is a good example of someone who would not have benefited from Machan's rejection of narratives since my father needed those stories to broaden his social understanding and re-evaluate his prior generalizations.

³⁹ For further discussion on the epistemic and political benefits of storytelling in small groups, see Ryfe (2007).

I am not claiming that we ought to banish premise-conclusion argumentation. Rather, FDE maintains that genuine inclusion of all those affected by a potential outcome can be best realized if we do not privilege certain forms of communication that tend to exclude non-dominant group members. Because acquiring critical reasoning skills to identify argumentative flaws tends to require a level of educative privilege, FDE takes all precautions to mitigate this advantage and to recognize how this privilege can impede access to relevant capabilities. So I recognize that using one's critical reasoning can be beneficial insofar as one may improve their position, however it can also be used to the advantage of one person and to the detriment of another by silencing her with a bombardment of accusations of logical fallacies and condemning her use of non-traditional forms of argumentation.

It is clear that I am arguing in favor of expanding our understanding of reason and argument to encompass those things which are more likely to garner us access to more important data than traditional philosophical argumentation may allow. For instance, Nussbaum may offer (persuasive) arguments for why female genital cutting (FGC) is morally pernicious. However, as I argued Chapter 2 by drawing on the work of Theresa Tobin, to make such claims about FGC—even if logically valid—without understanding the context of these practices is morally problematic. Nussbaum's claims about FGC would be better served with a more comprehensive anthropological account of a particular group that shares their stories and narratives. This would allow Nussbaum to better situate the practices of FGC in a larger historical and socio-economic context.

Nonetheless, despite all the advantages of narratives, they are always subject to criticism. Because narratives are an individual's account of her experiences, FDE is

cautious about how the challenges are presented. The person must be given the full opportunity to not only share her experience, but also be given the opportunity to share her insights into possible steps toward alleviating her concern. Her interlocutors are then in a position to raise criticisms with regard to her story and potential solutions, but they must do so in a way that gives *prima facie* moral deference, as we will see in the following section, to those who are non-dominant group members.

2.2 Moral Deference

Iris Marion Young discusses two barriers for achieving substantive equality in discursive encounters that she calls external and internal exclusion, respectively. External exclusion prevents individuals or groups from participating in the discussion-making process. Young attributes limited resources and the struggle for power as common contributors to external exclusion. So while it may be illegal to outright prevent a particular group from joining the political discussion, they may make it very difficult for them to access it. For instance, the dominant group can set meetings at inconvenient times and have polling stations in locations that are difficult to reach. Young sums up this kind of exclusion succinctly when she writes, “issues of *external* exclusion...concern how people are kept outside the process of discussion and decision-making” (2000, 55, her emphasis).

One may argue that Feminist Discourse Ethics would address the concern of external exclusion by emphasizing its central tenet that if an individual’s interests are actually affected by the outcome, then she has an opportunity to participate in the discourse. This response, however, does not fully address the problem. We can imagine a

difficult situation in which identifying who ought to constitute the discursive group is not very clear. For instance, a person may be considering the action of cutting back hours at work in order to care for an ailing loved one. In order to determine if this action is justified and thus should be pursued, she ought to consider the perspectives of the ailing loved one, and perhaps even her children who will be affected by the decision. The degree to which she consults her child will depend to some extent on their age. The mother may need to demand greater responsibilities of the child or perhaps even borrow against his college fund, but that does not seem to force her to fully consult her child. Nonetheless, the child should have some input or ability to express feelings and thoughts on whether the mother should cut back her working hours.

FDE demands allowing all affected parties to have an opportunity to shape the outcome, and the child will certainly be affected by the decision, and thus, should have some voice in the decision. The initial decision of who should participate is not an easy one, but one the mother will make in consultation with her ailing loved one. She ought to include her child in the discussion, but limit the child's participation. So I do not anticipate external exclusion objection causing much problem since FDE demands all affected interests to have an opportunity to participate.

My discussion of FDE thus far has been described as if the discursive community is closed off from outside interference. This may appear problematic as it is a kind of external exclusion. To some degree this is true. However, I argue that it may be a justified kind of exclusion in light of unequal social power relations. It may be essential that a community is closed initially while its members share their experiences of oppression. This moment is indispensable since it creates the space to share experiences

without fear of being questioned or judged. Patricia Hill Collins discusses the need for safe spaces for Black women's resistance, which includes places like churches and extended families. She explains that these spaces are not merely safe, but form "prime locations for resisting objectification as the Other...the dominant ideology promulgated not only outside Black communities but within African-American institutions" (Collins 2000, 101).

As a collective identity emerges out of the discussion, it is then important for the group to open itself to scrutiny from the larger public. If a community remains closed, it runs the risk of "repression and denial of autonomy, dogmatism, intellectual dishonesty and self-deception, elitism, and partialism" (Jaggar 1998, 16). Thus, Jaggar coins these groups "temporarily closed communities". FDE may advocate for beginning discourse as a temporarily closed community. However, it will never remain completely closed for fear of being epistemically dishonest since that would assume outsiders have nothing to contribute to the discussion. If a particular group truly believes they are immune to criticism, then it should be all the more welcoming of criticism in order to show the strengths of their positions.

Internal exclusion, on the other hand, is a much more difficult challenge since the issue is not about being admitted into the decision-making process; instead, it arises out of the problem that because people's claims are "not treated with equal respect...[they] lack effective opportunity to influence the thinking of others even when they have access to fora and procedures of decision-making" (Young 2000, 55). Marginalized group members tend to not be taken as seriously, so FDE must compensate to address this power inequality. Following Jaggar, I argue that we ought to reject formal equality in

favor of substantive equality, a kind of “discursive affirmative action, necessary to counterbalance the socially imposed obstacles to some women’s full participation in the dialogue” (1995, 128). There are a number of constraints on the dialogue to realize substantive equality, beginning with Laurence Thomas’s account of “moral deference”.

Thomas argues that we ought to give “moral deference” to those from “diminished social categories,” which includes people who are valued negatively and who are especially vulnerable to others in virtue of their social category. He explains that when individuals inhabit different social categories, the ways in which they experience their respective vulnerabilities will also be different.⁴⁰ For example, if a white person is beaten by a black person, the white individual has the advantage of healing by removing himself from black and brown spaces because he no longer trusts them. However, a black person would not be able to heal as easily if he were beaten, since the social world is constructed in such a way as to force blacks to inhabit white spaces. The act of beating an innocent person is inexcusable regardless of race, although Thomas points to the important role social categories play in understanding reality. Because the basis of social identity often produces unfavorable credibility judgments on the part of dominant group members judging subordinate group members, the interpretation of reality individuals from the non-dominant group construct is less likely to be deemed credible by dominant group members.

Maria Lugones and Elizabeth Spelman discuss some of the questions they encounter when attempting qua “outsiders” to give an account of an “insider”

⁴⁰ This point can be likened to Vrinda Dalmiya and Linda Alcoff’s “G-experiential,” that is, “gender-specific experiential knowing” (1993, 228). For example, a man (however empathetic) will never know what it is like to be a woman in a patriarchal marriage or rear children without the expectation of doing so. Their point is that men only have “propositional knowledge” about women’s experiences of oppression, whereas women have direct access to knowledge associated with those experiences.

perspective: “Why should you or anyone else believe me?”, “Could I be right?”, “What conditions would have to be obtained for my being right?”. These questions will lead a non-dominant group member to “doubt her own judgment and to doubt all interpretation of her experience. This leads her to experience her life differently” (Lugones and Spelman 1983, 577). This is doubly troubling—on the one hand, those from socially diminished categories have to fight for respect from those in positions of power, but also, on the other, they doubt their own experiences and understanding of them. FDE attempts to address these very real concerns by giving moral deference to people from diminished social categories.

To give moral deference would entail *prima facie* acceptance of an individual’s account of her experience because she is speaking from a vantage point that cannot be accessed by someone located outside her social category. Thomas explains that there “should be a *presumption* in favor of the person’s account of her experiences” which is “warranted because the individual is speaking from a vantage point to which someone not belonging to her diminished social category group does not have access” (1992-3, 244, emphasis added). This still doesn’t explain why we should give moral deference to marginalized persons, as opposed to dominant group members. To this, we can recall the above example of blacks inhabiting white spaces. Because black people are forced to be in white worlds, black people have access to those worlds in a way that white people may not have access to black spaces or even their own worlds. It is in this sense that FDE *prima facie* privileges non-dominant group members by embracing their experiences as starting points despite the fact that they will often not match the experiences of privileged group members.

FDE's commitment to moral deference (and inclusion, more generally) is one way to mitigate the problem of internal exclusion. Moral deference not only gives traditionally silenced voices an opportunity to speak, but privileges their experiences over members from dominant positions as a starting point. A step in the right direction is taken to treat members of socially diminished categories with the full respect and dignity they deserve by privileging their first-person narratives. Feminist Discourse Ethics, like FPD, works to create a safe space where a sense of community and trust is built between its members, and becoming more inclusive is one way to begin achieving this goal.

One may question my commitment to moral deference, fearing that privileged persons will have no genuine opportunity to shape the dialogue. Machan expresses a concern similar to this one. He says, upon first reading Jaggar's FPD, that he "felt hurt, indignant, about being unjustly accused, caricatured, stereotyped, demeaned, misunderstood, and derided because, well, I am a male" (1997, 54). Here, he argues that individuals ought to be understood as just that, individually.⁴¹ He says: "*I am the target of irrational discrimination, unjustly accused of crimes I not only wasn't guilty of but hadn't even imagined*" (Machan 1997, 55, emphasis added). He continues, "Yet it is simply false that *I had any part in such a policy*" (1997, 56, his emphasis).

The problem with this position is that it assumes an implausible conception of the person and responsibility. Jennifer Everett and Shelley Wilcox argue successfully that "individuals can contribute to [racism and sexism] that subtly communicates messages of unwelcomeness, inferiority, and marginalization towards members of certain groups"

⁴¹ For a further defense of the need for individuals, as opposed to collectives, within political dialogue see Machan (1996).

without having an idea that they are doing so, or an intention to do so (1998, 149).⁴² FDE understands that injustices operate at a structural level. In fact, the condition of *prima facie* moral deference attempts to mitigate the structural impact of power inequalities on discursive encounters by giving those from socially diminished categories a genuine opportunity to be heard and ultimately shape the outcome of the dialogue.

2.3 Listening Carefully

The discussion of moral deference in the previous section means very little unless the other participants are listening properly. One deficiency in Habermas's and Benhabib's models of discourse is that they dedicate so much attention to the speaker (e.g., what is being said) that they fail to pay adequate attention to the listener. FDE maintains that listening is not a passive endeavor whereby the person merely takes in what is being said, but rather an active engagement of listening to what the speaker says, interpreting their words, and offering feedback. This section attempts to offer an account of listening that will contribute to achieving substantive equality—or perhaps more genuine discursive inclusion.

Thomas explains that moral deference is the act of “listening...until one has insight into the character of the other's moral pain, and so how he has been emotionally configured by it” (1992-3, 246-7). The hope is that giving *prima facie* moral deference to another will eventually lead to bearing witness. The idea here is that if the listener earns the speaker's trust, the speaker will now be able to converse with confidence about her moral pain. Bearing witness requires a deeper and much more intimate connection between the speaker and listener than moral deference. The move from moral deference

⁴² For further discussion on implicit bias, see Gendler (2011), Payne (2001), and Saul (2013).

to bearing witness is not easy, and, in fact, it takes great courage to bear witness.

However, it takes even more courage on behalf of the speaker to discuss her moral pain without fear of being judged, and so, if one has the opportunity to bear witness, then a special bond has been built between the speaker and her interlocutor.

We can imagine a woman who shares her story about being sexually harassed, a Black person who remembers being called the n-word as he walked into white space, or the atrocities a Jewish person faced in Nazi Germany. In all these instances, if the speaker opens up about their experience, the listener has an obligation to not only listen attentively, but treat the speaker as an “informant,” to borrow a concept from Miranda Fricker, rather than as a mere “source of information”.

Recall from Chapter 2, Miranda Fricker offers an insightful distinction between “sources of information” and “informants”. I find the distinction helpful for thinking of a way in which listeners are able to give moral deference and have a greater opportunity to bear witness to the moral pain of others. Fricker (2007) explains that “*informants* are epistemic agents who convey information, whereas *sources of information* are states of affairs from which the inquirer may be in a position to glean information” (132, emphasis added). The informant and source of information both provide information to the inquirer, but how he treats them is very different. On the one hand, the informant never loses her subjectivity when providing the information being sought. The source of information, on the other, is reduced to an object (i.e., she loses her subjectivity) in virtue of being treated merely as a thing from which to glean information. Put simply, the inquirer treats the informant with the respect and dignity she deserves, and the source of information is stripped of her dignity.

So if a person is treated as a source of information then perhaps the listener did enough to earn the trust of the speaker to share her experience, but for whatever reason, the listener does not respect the speaker. Here the speaker never had a genuine opportunity to be an “active epistemic agent,” that is, someone who is able to contribute to the group’s knowledge. Fricker explains that when a person has suffered “testimonial injustice” that she has been relegated to the “same epistemic status as a felled tree whose age one might glean from the number of rings” (2007, 133). In other words, just as the tree stands as a passive object to be examined for the person’s benefit, the listener treats the interlocutor as if she is a passive object for information to be gleaned as the interested person sees fit. It should be no surprise that Feminist Discourse Ethics demands all (marginalized and non-marginalized) participants be treated as informants and not mere sources of information.

To be a successful listener requires giving moral deference to marginalized peoples and supporting them in bearing witness to their own pain by treating them as informants. In order to do this successfully, one must not only develop the right epistemic posture, but also have a sense of openness. Lugones captures what it means to be open through her discussion of “playful world-traveling”. There are two parts to this notion that are especially relevant for this discussion. First, she says a “world” may be an actual society. Worlds can be imposed on us, as is the case for marginalized group members. Or, we can choose our worlds, as we often do when we join particular organizations. To describe one’s world is to offer a “description of experience, something that is true to experience even if it is ontologically problematic” (Lugones 1987, 11). Second, being “playful” entails a “loving attitude in traveling across ‘worlds’” (Lugones 1987, 15). One

must be open to the way in which reality looks from the other world. This may entail being a “fool,” as Lugones states, or suspending norms that we take for granted as good. So playful world-traveling describes an epistemic and moral openness that allows a person to perceive others and the worlds they inhabit with loving eyes and an openness to those unlike herself.⁴³

I find playful world-traveling to be particularly helpful for FDE because it offers participants a way in which they can develop a sense of openness to inhabit different worlds; it is beneficial for both dominant and marginalized group members. For the former, it opens them up to a reality that they are otherwise able to avoid. Because dominant group members are not forced to inhabit the worlds of non-dominant spaces, the former are often left greatly ignorant to the plight of marginalized peoples. For example, wealthy people may claim that they “could only imagine” what it would be like to be poor, but traveling to their world offers insights that could not be gained otherwise.⁴⁴

Lugones explains why playful world-traveling is also beneficial for non-dominant group members. Since they are already forced to inhabit difficult spaces, this gives them an opportunity to do so in a playful manner. I am not trying to romanticize traveling between worlds, but following Lugones, playfully attempting to travel to other worlds seems to be epistemically and morally better than traveling in a bitter and frustrated way. This benefits dominant group members especially because they will likely be more open

⁴³ The notion of perceiving with a loving eye can be traced back to Frye’s (1983) concept of “loving perception” and Iris Murdoch’s (1970) “loving gaze”. For a further discussion on Murdoch’s conception of a loving gaze, see Snow (2005).

⁴⁴ The CEO of Panera Bread, Ron Shaich, attempted to live off \$4.50 per day, which is typical on the Supplemental Nutrition Assistance Program, formerly known as the Food Stamp Program. He said that only after a few days he “can’t stop thinking about food”. <http://www.latimes.com/business/money/la-fi-mo-panera-ceo-food-stamps-20130916,0,2313385.story>. Accessed 10/1/13.

to understanding worlds other than their own and learning from those perspectives. Furthermore, as contentious as this might be, it's also important for non-dominant group members to listen to those who are privileged. One might be resistant to this because the former are forced to hear them anyway. While this is certainly true, it would be a mistake to think that all dominant perspectives are dominant in the same way. Because FDE claims discourse must take place between concrete others, marginalized individuals must understand the dominant person's history, and at this point, the person of privilege will be in a better position to give moral deference since he will have developed a connection with the speaker, treat the speaker as an informant, and hopefully, bear witness to her pain.

Lugones and Spelman capture the importance of good listening and the difficult nature of doing so. They claim:

[I]f white/Anglo women are to understand our voices, they must understand our communities and us in them. [...] This learning calls for circumspection, for question of yourselves and your roles in your own culture. [...] This learning is extremely hard because it requires openness...sensitivity, concentration, self-questioning, circumspection. It should be clear that it does not consist in a passive immersion in our cultures, but in a striving to understand what it is that our voices are saying (Lugones and Spelman 1983, 581).

Listening requires great epistemic humility, especially from those who are dominant group members, for many reasons, including an attempt to earn the trust of marginalized group members, to question one's own commitments and values critically, and bear witness to the suffering of marginalized populations without the dominant person thinking he "passes" for one of them.

There is very little difference between FDE and FPD in regard to striving for substantive equality between speaker and listener. Both seek to go beyond the bare

requirements of formal equality, each recognizing that power inequities within discursive communities are inevitable and that one way to address this is by being inclusive and an active listener. However, as I will show in the following section, the similarities end there.

2.4 Incommensurability

We may accept all the forms of communication provided by Feminist Discourse Ethics, in addition to being an open speaker and an active listener, but this does not ensure we will be able to reach commensurability. Commensurability occurs when an agreement and understanding is reached between dialogue participants. It is of note that commensurability is closely related to, though not identical with, consensus.

Commensurability attempts to reach a mutual acceptance on a given meaning, and consensus seeks a mutual agreement on a course of action. The presumption seems to be that commensurability is necessary for consensus, since without a mutual understanding of the terms under discussion, a genuine consensus on the matter cannot be achieved.

Commensurability, like consensus, is often a goal of discursive communities. I'm not inherently opposed to this goal. However, there is a reason to call its primary value into question, namely, because agreement may be reached "formally," but not "materially". For example, one may concede a point in order to avoid backlash, and so agreement may have been formally but not substantively or actually achieved. Members of marginalized groups are disadvantaged in this way since dominant groups do not experience the same concerns of suffering backlash. In contrast, acceptance means the discursive participants had a genuine opportunity to reject or adopt the norms under

discussion and have chosen to embrace them as their own. They did not agree to them because they felt forced to assimilate or couldn't speak up, but rather because they actually found them to provide the best guidance for their group.

Benhabib claims, as I have shown in the Chapter 3, that the goal of discourse is not consensus, but a “process for the cooperative generation of truth or validity” (1992, 37). In other words, it is not the end-product (*viz.*, consensus) that concerns Benhabib, but how consensus is achieved. So while consensus is not the explicit goal of discourse, it is clear that she hopes to attain consensus if the right conditions are satisfied. These conditions include possessing shared meanings or interpretations—or commensurability—on at least her two core principles of “universal respect” and “egalitarian reciprocity”. These principles, according to Benhabib, provide a

limit for our intuitions: in some deep sense we know that the plight of women like Metha Bai and her condemnation practically to death by an outmoded and irrational *pardah* system is unjust...because we can understand her language, her actions, her emotions, her needs, and because we can communicate with her and see the world, more or less, maybe never wholly but adequately enough, as she sees it (Benhabib 1995, 251).

To support her claims, Benhabib cites a case study from Martha Chen where she discusses the plight of “poor women in poor economies, like...Metha Bai, who must break with tradition and act independently because they lack the security the tradition is supposed to offer” (Chen 1995, 37). Benhabib (1995) argues that one can simply read about a “system of familial solidarity and interdependence [that] has collapsed leaving widows like Metha Bai destitute and desperate” (240). Regardless of one's geo-political location, the principles of universal respect and egalitarian reciprocity for Benhabib express to us that Metha Bai, and women like her, are suffering under the system of *pardah*.

I find this to be a deeply problematic assumption (or intuition) on two levels.⁴⁵ First, cultural outsiders who read Metha Bai's story are likely to suffer interpretive challenges and biases; they will not have a full understanding of the situation itself and how it fits into the greater geopolitical and socioeconomic picture. Second, on a more intimate level, I'm not convinced that one will necessarily understand Metha Bai's language or emotions based on an intuition that we supposedly all share of "universal respect". Our intuitions are shaped by the worlds we inhabit, so attempting to understand a world completely unbeknownst to a reader will likely produce different (perhaps, mistaken) intuitive responses. There are also other concerns of whether her perspective represents women similarly situated. Hopefully, through a version of discourse ethics like the one I propose, I would have the opportunity to bear witness to her moral pain (if in fact this is what she has endured), but this is far from a guarantee. And even if bearing witness is possible, it will not necessarily reveal Benhabib's "obvious" conclusion that women like Metha Bai are suffering from a tradition that perpetuates women's subordination.

Uma Narayan has shown the problems with assuming we all share a basic understanding of any event or structure, even if it appears to be an "irrational system". For instance, *sati*, the practice of widows immolating themselves on a pyre, has been a fixation for many Westerners. Narayan argues convincingly that *sati* is not a practice that the West ought to take up as their "free women from backwards cultures" project. She explains that *sati* became a "widespread phenomenon whereby local practices and

⁴⁵ I have argued elsewhere (Kleist 2013, 276) that Amartya Sen makes the same mistake as Benhabib. He claims that we should take an agent's "positional objectivity" (or social-situatedness) seriously, but the hope is transcend that our particular situation by understanding many different points of view, what he calls "transpositional objectivity" (Sen 2002, 477).

localized ‘traditions’ in Third-World contexts were constructed into ‘national traditions’...[which] became crucial components of political struggles for independence from colonial rule” (Narayan 1997, 67). Many people in the West will decry the use of *sati* and its continuous practice in “Indian culture”. However, those unfamiliar with the culture, and who lack an understanding of its history, including colonial influences, should refrain from judgment.

This example reveals (among many things) that despite Benhabib’s insistence that consensus is not a goal, she has constructed a version of discourse based on two principles that shows her commitment to universal shared understandings. The fact that commensurability is an easily achievable condition of discourse for Benhabib, she is able to endorse the ensuing action-guiding norms reached by consensus. Rather than obsessing over trying to identify shared and common understandings, FDE accepts the fact that there will likely always be incommensurability between discursive participants, that is, some remainders of meaning that are not shared.

Ofelia Schutte argues that there is epistemic and moral value found within “incommensurability”. She understands “incommensurability” as the “residue of meaning that will not be reached in cross-cultural endeavors” (Schutte 1998, 56). She explains that this occurs in conversations where “the other’s speech...resonates in me as a kind of strangeness, a kind of displacement of the usual expectation” (56). There will always be points of incommensurability in cross-cultural dialogue, however it’s how we understand the difference that will enable dialogue to flourish. The most common residue in cross-cultural dialogue is the untranslatable parts of another language through one’s own. Schutte explains that to address this problem many have advocated for trying to include

as much meaning as possible to be exchanged. However, she fears this will lose cultural differences. Instead, she argues to preserve aspects of speech that “resonates in me as a kind of strangeness, as a kind of displacement of the usual expectation” (Schutte 1998, 56). That is, we should value incommensurability of meanings, those aspects of another’s experience that are not entirely accessible to me.

In light of Schutte’s account of incommensurability, FDE embraces the inevitability that discursive participants will not always reach a mutual understanding on the topic at hand. So in the case of *sati*, Narayan is able to present a more accurate representation of the term. She is not offering an alternative perspective of *sati*, but an explanation for a concept that many Westerners believe they understand with little examination. Once a person understands the concept, then she is in a better position to evaluate value judgments on it. However, despite this newfound understanding, it would be very difficult for someone outside the tradition to fully grasp the meaning of *sati*.

There are three advantages to understanding dialogue in a way that embraces incommensurability. First, discursive participants will have a commitment to dialogue as an on-going process. Incommensurability is often a conversation-stopper for people, but it need not be taken in this way. Rather, it can be a point of departure to continue discussions in light of the “residue” or even instill in interlocutors that whatever agreement has been achieved thus far is never a *fait accompli*. The residual meanings are provisional and subject to further revision, even if for now they are well enough established to support action.

Second, in light of the first point, the epistemic posture taken by those engaged in dialogue who value incommensurability is likely to be one of openness since they are not

trying to force a conclusion. Instead, these discursive participants understand that the dialogue may continue without reaching a definitive conclusion. So if a person is committed to incommensurability, she is likely to consider many viewpoints, even those that run contrary to her own, in hopes of advancing her own position. This is significant because it creates the possibility for personal transformation, which is a necessary condition for moral deference and bearing witness. Moral deference and bearing witness require an individual to gain insight into their interlocutor's world, and so they must be willing to change their perception of reality in order to better understand the other's perspective.

Finally, as insisted by both Benhabib and Jaggar, moral discussion is "valuable for its own sake" since it helps cultivate empathy, trust, care, imagination, and many other democratic virtues (Jaggar 1995, 136). Rather than forcing discussion to end by possibly forcing a consensus, incommensurability creates a space for further discussion; it is not just any conversation, though, but one with a new point of departure based on the remaining epistemological and moral residue. This is not to say an agreement cannot be achieved, and in fact I would not argue against trying to reach an agreement. However, if primary value is given to achieving agreement then the discussion runs the risk of glossing over differences, dismissing meanings that are complicated, and preventing further discussion when apparent impasses have been reached. So I argue that when incommensurability is reached, we look to continue the discussion as opposed to halting it.

Feminist Discourse Ethics, unlike traditional discourse ethics and Feminist Practical Dialogue, does not aim at commensurability or consensus, although, if it

happens, it will of course be accepted. I fear that making these a goal will lead to compromises, which will most likely be from marginalized group members since they have the most to lose if they do not consent. Or, if they disagree with the dominant perspective, they run the risk of backlash. I hope FDE has placed enough substantive constraints on the dialogue to mitigate this problem, however there is no guarantee that backlash will not occur.

Consensus, for most discourse ethicists, would be the criterion for supporting action. So one may raise the concern of not knowing when enough substantive agreement has been reached to support action. I would argue that incommensurability is not incompatible with supporting action. A group may be unable to achieve shared understandings on particular concepts, and yet understand that action must be taken in order to achieve a greater life. However, as a theorizer, I would not feel comfortable setting the proper amount of agreement. That determination would likely occur by the group itself. More importantly, I challenge the group to remain persistent and keep in mind that incommensurability is a point of departure for more discussion and not a discursive stop loss. These new discussions may spark conversations previously unconsidered or advance the discussion in an unexpected way. Now, the final question one may ask: who actually participates in the discussion?

3. Defining Who Participates in the Dialogue

Following Robert E. Goodin, I adopt his language of “constituting the demos” to address the problem of who should be included in the discussion.⁴⁶ The question Goodin

⁴⁶ This problem has also been stated as “The Boundary Problem” can be found in Whelan (1983) and the “Problem of Inclusion” in Shklar (1991).

asks is this: what principle might we accept to determine the initial membership of the demos? He begins to answer this question by arguing that the principle must be independent of the procedure used to achieve outcomes. As he argues, constituting the demos is logically prior to any other part of the democratic process. The decision of how to constitute the demos cannot be democratic since that would be simply question-begging. As Goodin (2007) says, that would be like claiming the “winning lottery ticket will be pulled out of the hat by the winner of that selfsame lottery” (43). If the person who picks the winning number is already the winner before the lottery then it is not really a lottery. Likewise, deciding who participates in the discourse cannot initially be a democratic process because there is no need to make a decision because the group making that decision would already exist.

The most plausible answer for who constitutes the demos is “all those affected by the decision”. What it means “to be affected by” is rather ambiguous. Goodin offers a number of plausible candidates, including “all *actually* affected interests,” “all *possibly* affected interests,” “all *and only* all affected interests, and “all *probably* affected interests”. It is beyond the scope of this project to discuss these at length, but I argue in favor of “all actually affected interests,” which includes actual interests affected by actual decisions. Goodin (2007) criticizes this position because “it is unable to tell us who is entitled to vote on a decision until after that very decision has been decided” (52). In other words, because we cannot truly determine who all is affected by a decision until after the decision is made, there is no true way to decide who should participate at the outset of the discourse. This is a consequence I am willing to partially accept. It is not that it is incoherent, but a matter of fact for most groups.

Every group must begin somewhere. For example, Ela Bhatt, founder of the Self-Employed Women's Association (SEWA), had to make difficult decisions about how to start the organization. The founder of a group, in this case Bhatt, is forced make a difficult (albeit not impossible) decision about who constitutes its original members. That process cannot be understood in a vacuum; once the group develops, its members are able to make decisions in regards to whom can be admitted, and of the admitted, who has voting rights, and so forth. In other words, it is the responsibility of the founder(s) and its subsequent members to seek out to the best of their ability all those who will actually be affected by their decisions.

One might ask about the connection between defining who participates in the dialogue and my conception of feminism, given that my version of discourse is explicitly feminist. Women's subordination is highly contextual. Well-intentioned feminists from the West have expressed frustrations over the way in which "poor women from poor countries" are being treated. However, post-colonial theorists such as Uma Narayan (1997), Chandra Mohanty (1991), and Alison Jaggar (2005), have argued that Westerns should not cast judgment without first closely examining a community's socioeconomic and historical context. I believe this reveals the need for localized groups to be constituted out of all who will actually be affected by the decision, especially actively seeking out non-dominant group members since they often have much to contribute as epistemic and moral agents despite often being silenced.

A central methodological commitment of Feminist Discourse Ethics is to prioritize the most marginalized groups who are likely to be silenced and provide them a voice, with an eye towards gender injustice, and possible avenues to address these harms.

Recall, a problem with Nussbaum's methods of justifying capabilities is that she silences marginalized groups which ultimately undermines her claim that she achieves cross-cultural validity and gender-sensitivity for her version of capabilities. In contrast, FDE seeks to eliminate those who silence voices by creating an atmosphere that respects traditionally marginalized voices, which includes having a space for them to speak freely (whether that be in a nurturant or adversarial manner). Furthermore, those who inhabit non-dominant groups are given moral deference in order to ensure their stories are listened to and taken seriously. Vasanti and Jayamma, for instance, would be given an opportunity to genuinely criticize Nussbaum's list. This would force Nussbaum to respond to their criticisms by either defending specific capabilities on her list or explain why prospective capabilities should not be included. As I have shown in Chapter 2, Nussbaum's monological moral reasoning has led her to ignore other perspectives, and ultimately harmful implicit biases and prejudices have infiltrated her theorizing. This reveals two important points of the scope: (1) it needs to be restricted insofar as it should include initially only those who are most directly impacted first and then widen the discourse if need be (as SEWA did) and (2) it must be inclusive of the most marginalized among those actually affected, which is influenced by the feminism of FDE.

4. Answering the Critics

The goal of this section is to see the advantages of drawing on Feminist Discourse Ethics for the purpose of justifying capabilities as cross-culturally valid and gender sensitive over other versions of discourse and Nussbaum's primary justificatory methods of reflective equilibrium and overlapping consensus. To realize this goal, I will present a

case study on the Bangladesh Rural Advancement Committee in order to show how my account of FDE is better able to satisfy the methodological criteria proposed in Chapter 3, namely, addressing unequal social power relations, developing a method that has revisable and self-critical principles built in it, and striving for modest goals. I hope to show that FDE is able to address these problems in a way that other versions of discourse cannot.

4.1 Bangladesh Rural Advancement Committee: A Brief Case Study

The Bangladesh Rural Advancement Committee (BRAC) was started in 1972 as a development organization dedicated to alleviating poverty and empowering women. Their mission is as follows: to empower people and communities in situations of poverty, illiteracy, disease and social justice.⁴⁷ For purposes of our discussion, I will focus on literacy. Martha Chen (1995), a former BRAC worker and philosopher, describes the program as a place for women who “needed to break out of enforced seclusion to enter the labour force” (39). This was accomplished primarily through training, credit (micro loans), and extension services, all in effort to enhance productivity outside traditional home roles. Specifically, Chen notes that the women took advantage of BRAC offerings, such as “non-formal education classes” (1995, 44). The Non-Formal Primary Education model, according to the BRAC Education Program (BEP), is a “three year programme for poor children aged 8-10, who were never enrolled or had dropped out of formal schooling”.

The BEP has not wavered since 1985 when it first launched 22 one-room primary schools “to develop a school model for poor, rural children, especially girls, which would

⁴⁷ The mission of BRAC can be found at <http://www.brac.net/our-approach>.

equip them with basic reading, writing, numeracy and life skills”.⁴⁸ As BEP states, they have had many accomplishments recently, including a 99.99% pass rate of BRAC pre-school graduates in a Primary School Certificate exam (significantly higher than the national average of non-BRAC students), 93.7% pass rate of girls in a 2014 Secondary School Certificate exam, and nearly 2,000 girls receiving undergraduate scholarships.

The benefits of BEP are undeniable. Between 2008-2012, the total adult literacy rate of Bangladeshi people is 57.7%. This has grown exponentially from 1980-1989 when 15-24 year old Bangladeshis had a literacy rate of 27%. Interestingly, as of 2012, youth (18-24) literacy rates slightly favor females (80.4%) over males (77.1%).⁴⁹ The exponential growth would have been unthinkable just a few decades ago. I provide this background as one way to show that the people of Bangladesh have placed great importance on, and dedicated resources to, education. However, what remains unclear is whether Nussbaum believes this commitment to education was a recent development.

Nussbaum, as I mentioned in Chapter 1, claims everyone must be given the opportunity to fulfill the basic good of education, which for her includes literacy. So the question is: why do the people of Bangladesh (especially women in the 1980s) have high illiteracy rates? To answer this question, Nussbaum writes,

The poor and deprived frequently adjust their expectations and aspirations to the new low level of life they have known ... They may not even know what it means to have the advantages of education ... They may have fully internalized the ideas behind the traditional system of discrimination, and may view their deprivation as “natural” (1995b, 91).

⁴⁸ See the BEP fact sheet at <https://www.brac.net/sites/default/files/factsheet/june15/education.pdf>.

⁴⁹ All current literacy statistics on Bangladesh can be found in the Statistics section of UNIEF, http://www.unicef.org/infobycountry/bangladesh_bangladesh_statistics.html#117. For the 1980-1989 literacy statistic, see the Human Development Index chart in Nussbaum’s Introduction (1995b, 20).

Nussbaum seems to believe that Bangladeshi women do not place much value on education. In some sense, they appear “duped” by their “traditional systems of discrimination”. If the traditional system claims that Bangladeshi women should not place a high priority on education (and ultimately literacy), then they have internalized these beliefs and adapted their preferences to believe it to be the case. This commitment is further iterated in her 2011 work on capabilities when she claims that even women who gain new information on the benefits of education may be unable to change their view, especially those “who have deeply internalized the idea that a proper woman does not go in for schooling” (84).

The above example of BRAC will be used to highlight the ways in which FDE as a method of justification better satisfies the following methodological criteria than either of Nussbaum’s justificatory strategies.

4.2 Power Dynamics

In Chapter 2, I demonstrated the ways in which Nussbaum’s theory dismisses viewpoints from marginalized groups without any major recourse. This point is captured in the case study presented above. Nussbaum doesn’t consider the complexities for why Bangladeshi women may not value education in the way Nussbaum does. She cites Martha Chen’s work on BRAC, in addition to literacy statistics from the Human Development Index (HDI), and draws the conclusion that Bangladeshi women simply do not have preferences that favor education and literacy because of longstanding traditional systems. She never really engages Bangladeshi women.

I attempt to provide a discourse ethics response to this concern in Chapter 4, as presented by Habermas and Benhabib; their version of discourse accepts that people are more-or-less diversely socially situated, but they offer no substantive constraint to address the impact of social inequalities on discourse. They argue that we ought to strive for “egalitarian reciprocity,” however, in reality this is highly unlikely to be achieved through mere striving. The issue is that they posit equality rather than telling us how discursive equality might be achieved. Rather than striving, FDE offers discursive constraints aimed at bringing discourse participants toward equality and respect in the discourse.

One of the ways in which power manifests itself is in and through language. As a defensive mode, educated people often resort to using complex terms in a very logically structured manner. We often see this practice in academia. For example, an instructor, who is in a position of authority, may silence a student by “talking over her head,” so-to-speak, or discuss a topic that is beyond her comprehension of that area. One way to mitigate this problem is to accept more inclusive forms of communication (e.g., greetings, rhetoric, and narratives) as reason-giving. Being more inclusive does not entail banishing traditional accounts of premise-conclusion argumentation, but emphasizes the importance of other types of communication.

Moreover, giving *prima facie* moral deference to the moral experiences of individuals from socially diminished categories renders these individuals as quasi-authorities on particular matters. A proponent of FDE would examine the low literacy rates of Bangladeshis much differently than Nussbaum. For instance, rather than using one’s privilege to project a conception of the good (*viz.*, education) on those who are

embracing it wholeheartedly, FDE begins with their experiences. Upon further investigation, Nussbaum would have realized that women value education in general, but that it is very expensive. So they are often confronted with a tragic dilemma to provide education to either themselves or their children, and Bangladeshi women will almost indefinitely choose their children as they will have greater opportunities. More importantly, high illiteracy rates are not simply about women taking on oppressive preferences; instead, it includes “economic and social circumstances that affect the entire population” (Ackerly 2000, 107). Being highly educated and inhabiting a political super power (like Nussbaum) brings an undeserved amount of power and privilege, but moral deference and bearing witness to another’s pain is meant to balance or check this inequity.

A final way to diminish the epistemic impact of asymmetrical power relations is to become virtuous listeners. Formal equality of traditional discourse ethics supports the rights of all participants to speak. However, as I argued earlier, the problem is not with how much people are able to speak, but what sort of speakers and forms of speech are excluded from the discourse, whether those speaking are heard, and whether there is any genuine uptake of their perspectives. Good listening is required in order for participants to genuinely contribute to the outcome.

4.3 Revisability

I have argued that a list of capabilities, for instance, ought to be revisable. In Chapter 2, drawing from Jaggar, I pointed out the need for a feedback loop between our methods and conclusions, where we re-evaluate each in light of one another.

Furthermore, I called for the need to seek out multiple perspectives since that will force our theory (and its principles) to be tested from an array of beliefs.

Nussbaum's method of moral reasoning is monological, meaning that the theorist is the sole agent and arbiter while reasoning about morality and politics. Yet, as I argued in Chapter 2, Nussbaum has no mechanism built into her methods of justification that subject her views to criticism from the outside that result in a reevaluation of those beliefs and practices in light of the criticism. Her methods of reflective equilibrium and overlapping consensus have no on-going process of critical feedback between herself and her critics. This allows Nussbaum to make sweeping claims about what women in Bangladesh *really* prefer in regards to their educational future. She is able to say they do not value education without being concerned as to whether her definition of education should be reconsidered (or even possibly jettisoned from her list), or uncovering outside circumstances that may shed more light on why they have not "chosen" to receive a formal or informal education.

To be genuinely revisable, it is not enough to simply seek other values and beliefs. Nussbaum, for instance, is adamant that her views are subject to scrutiny and criticism and she claims to have sought out critical perspectives, as, for example, when she interviewed Vasanti and Jayamma. The goal of the interviews is to draw on their experiences as women who inhabit different social strata from Nussbaum and then use their accounts to help provide feedback on her list. Despite these conversations, however, her list remained unchanged. Their perspectives did not provide genuine feedback, which could shape the list of capabilities or their interpretation. Nussbaum's methods of justification make her version of the capabilities immune to external critical perspectives.

Discourse ethics as a method of justification has mechanisms in place to encourage revisability of participants' views because they are dialogical. However, traditional discourse ethics doesn't satisfy this condition as well as Feminist Discourse Ethics because FDE not only engages in a method of moral reasoning where its members are continuously challenging one another, but actively seeks perspectives that challenge the discursive community's outcomes. FDE would not simply accept the fact that Bangladeshi women do not value education because their illiteracy rates are higher than that of any Western nation. Rather, they would investigate current economic and social circumstances that impacted specific decisions of whether to pursue an education. However this is not enough; it also demands seeking alternative considerations as well. FDE may remain closed temporarily if a safe space needs to be created, but through time it must open itself to scrutiny from the larger public. Thus, the norms that emerge out of the discourse are also subject to scrutiny by both its own members and those outside the community.

4.4 Self-Critical

The methodological criterion of being self-critical is related to the criterion of revisability because it would be very difficult to have a genuinely revisable theory with individual group members who relentlessly maintained their beliefs. At the moment our beliefs are challenged, many try to hold onto them tighter. However, this is deeply problematic as it displays a form of dogmatism. My concern with Nussbaum is that she imports her own values into her theory and does not critically engage those who do not share her beliefs. As Ackerly (2011) explains, Nussbaum believes "literacy promotes

women's economic flourishing, autonomy, and self-respect ... However, economic flourishing, autonomy and self-respect have significantly different meanings" for poor rural Bangladeshi women (108). Likewise, interestingly enough, while traditional discourse ethics allows everyone to participate in the dialogue equally, it has no constraints on the dialogue to encourage self-criticism.

FDE encourages its members to assume a level of epistemic humility since we are all fallible. This will impact both the way in which we present our position and how we listen to others. In regards to the former, members are less likely to convey their position in a forceful or demeaning manner since they recognize their position has limitations. There is a lot at stake in how we present our views, and if we do so in a way that is open and malleable, then others will feel more comfortable challenging and advancing it. FDE discourages combative attitudes where discursive participants try to overpower others with their arguments, but rather embraces an atmosphere of "friendship, love, and care for concrete rather than generalized others" (Jaggar 1995, 138).

The conversationalist, now in a position where she will listen more carefully, knows that the speaker's views contribute to both the group's norms and one's own position. This should not be mistaken as an assumption that the listener should simply praise everything the interlocutor says. Instead, the listener should treat the speaker with respect by ensuring that she has interpreted the speaker accurately and then offer feedback.

One of the most important reasons for members of FDE to be self-critical is that they are attempting to identify the very complex ways in which subordinated peoples are silenced and possible avenues to address them. Both identifying and ameliorating their

subordination, which includes devoting attention to other socio-political factors, is highly contextual, and there are nearly an endless number of positions. Returning to our case study, Ackerly asks us to pay better attention to the “particularities of a society” (109). This will require Nussbaum to examine her commitments, such as placing primary importance on education and autonomy. If she were to do so, Nussbaum may uncover the belief that economic stability (likely through credit) may prove a better option for achieving economic flourishing and interdependence than literacy.

So as FDE engages in this process it reminds its members that despite how well-positioned one might be to assess the situation, others also have valuable insights. To this extent, members participating in FDE are more likely open to change by remaining self-critical.

4.5 Modest Goals

There is no precise definition of what I mean by “modest goals,” but there are two ways in which FDE is not an *overreaching* method for justifying capabilities; instead, it seeks to achieve feasible goals. First, the aim of FDE is not placing primary importance on consensus. There seems to be little benefit in trying to force a group to arrive at a consensus since I fear this will most likely lead to non-dominant group members assimilating to dominant perspectives in order to avoid fear of backlash. Nonetheless, deliberative skills such as empathy and listening virtuously are still being cultivated. FDE recognizes that discourse often leads to incommensurability between discursive participants.

One may be concerned at identifying the appropriate point at which the discourse has achieved enough justification for the time being to support action. As noted above, a group's call to action is fully compatible with incommensurability. I believe the discursive participants can predetermine the amount of agreement needed to move ahead with supporting action from the outset of their discussion. However, I suggest not getting caught up in that determination since it may detract from the larger benefits of incommensurability, namely, creating discussions that otherwise would not be had or advancing a current discussion in a way previously unconsidered.

Second, FDE is a method committed to supporting the tentative and revisable nature of claims because individuals who produce the theory, regardless of how well-intentioned they may be, are fallible. So our theories too may be fallible, especially the way in which the theory is put into practice. Following Brooke Ackerly, rather than treating the norms that emerge out of the discourse as "the" answer to a given problem, participants of FDE consider them to be "guiding criteria" in a first step moving forward. This is not to say that all norms emerging out of the discourse are any less valid or worthy of implementing. I am simply shifting the emphasis from immutable norms to suggested criteria or provisional outcomes.

Rather than seeking a universal commitment to end all illiteracy and demand secondary education, as we see with Nussbaum, FDE encourages non-Bangladeshi peoples better understand the complexities around literacy and education in Bangladesh. It would likely result in refraining from immediate judgment based on literacy statistics and then giving *prima facie* moral deference to the local people most directly affected by the situation. They would then shed light on their complex situation for high illiteracy

rates and the best way to address the situation, if they think it is even best to do so. Furthermore, the Bangladeshi peoples may encourage those unfamiliar with their situation to reevaluate their current understanding of education and literacy, much like Nkiru Nzegwu, and replace it with concepts more applicable to their situation.

5. Conclusion

In this chapter, I articulated a version of discourse ethics I call “Feminist Discourse Ethics”, which has been inspired greatly by Alison Jaggar’s Feminist Practical Dialogue. FDE is a method for justifying capabilities and is gender sensitive, with the explicit goal of identifying the ways in which women are subordinated and finding practices to address these harms. In doing so, though, FDE does not ignore other socio-economic factors such as race, class, geo-political positioning, sexuality, religion, and the like which may further contribute to the outcome. I argue that all actually affected by the discourse have the opportunity to participate, especially those from traditionally marginalized groups.

FDE, like all versions of discourse, is committed to everyone having the opportunity to speak freely and equally. It follows Jaggar’s FPD by welcoming first-person narratives and story-telling, in addition to greetings and rhetoric as acceptable forms of communication. However, allowing everyone the opportunity fails to achieve substantive equality since certain voices are not taken as seriously. To address this concern, FDE gives *prima facie* moral deference to non-dominant perspectives, and if trust is earned, participants may be willing to share their moral pain for others to bear witness. Moreover, FDE demands its listeners not merely receive the information from

speakers passively, but treat them as informants by actively engaging their comments. These discursive constraints are then used to help achieve substantive equality.

A concern that one might raise with FDE is its inability to support action given a commitment to incommensurability. To this, I argued that incommensurability and action guidance are not incompatible. The discursive community will need to set at the outset the proper amount of agreement needed in order to move forward with action. Again, it is important not to get riddled with identifying that amount, but instead staying focused on the advantages of incommensurability.

The goal of this chapter is to demonstrate that FDE, as a method of justifying capabilities, is superior to not only traditional versions of discourse ethics, but also Nussbaum's methods of reflective equilibrium and overlapping consensus. I attempted to realize this goal through a case study on the Bangladesh Rural Advancement Committee. The inclusive nature of FDE allows it to seek diverse and marginalized perspectives in a way that the previously mentioned methods cannot. Furthermore, FDE has mechanisms that allow its participants to be genuinely self-critical and subject their positions to revision. This has the advantage of realizing Nussbaum's own goals of having a list that achieves cross-cultural support, and yet is subject to on-going revision.

CONCLUSION

The capabilities approach is meant to be a global moral theory. Martha Nussbaum's justifications for claiming this status is that (1) the capabilities genuinely represent "our" intuitions about dignity, (2) there is convergence or overlapping consensus among reasonable comprehensive doctrines on the conception of dignity expressed by her proposed list, and (3) her theory has the ability to identify gender specific harms. This dissertation was not meant to undermine the capabilities approach despite my critical analysis of Nussbaum's version, but rather strengthen it. My approach to doing so is centered on creating criteria of adequacy, which are used to determine whether a method of justification is satisfactory for defending capabilities as a global moral theory. The relationship between a theorizer's method of justification and their theory is especially valuable when the theorizer seeks to defend a universal list that claims to have cross-cultural support. Given the fact that Nussbaum is striving for her commitments to be endorsed by individuals who possess incompatible religious and moral doctrines and inhabit a myriad of social backgrounds, she must be particularly cautious not to dismiss relevant viewpoints or overpower non-dominant perspectives.

In Chapter 1, I closely examined Nussbaum's two methods for justifying her list of capabilities, namely, reflective equilibrium and overlapping consensus. First, reflective equilibrium is meant to offer cross-cultural support to her list since this method asks the theorizer to consider other points of view and test one's intuitions against them while seeking coherence between her moral judgments and theoretical principles. Nussbaum concludes that our intuitions about dignity match her list of ten central capabilities.

The second method Nussbaum uses to justify her approach is overlapping consensus. Overlapping consensus is achieved when reasonable citizens are able to agree on a theory of justice that is compatible with many reasonable comprehensive moral and religious doctrines. Nussbaum believes her list of central capabilities is a political doctrine that can be an object of overlapping consensus since citizens from diverse moral and religious backgrounds can agree that everyone ought to have the ability to fulfill them. The distinct advantage of overlapping consensus over reflective equilibrium is that in international settings, it is much more plausible that consensus on ten highly abstract basic entitlements can be reached among persons with different comprehensive doctrines than it would be to achieve coherence between one's beliefs, the principles underlying those beliefs, and (since Nussbaum seeks wide reflective equilibrium) subjecting our beliefs to further criticisms by pondering other doctrines and determining on which grounds our theory is more choice-worthy.

I believe Nussbaum's methods for justifying capabilities are weak and threaten to undermine the very values her theory seeks to secure for all individuals. She appears to underestimate the importance of interpreting and evaluating capabilities. For example, reflective equilibrium must answer the question, "whose intuitions are considered most salient to reach coherence?" and overlapping consensus, "who determines which political doctrines are worthy of consideration for overlapping consensus?" These justifications do not in fact ground the universal authority Nussbaum claims for her theory, and the biggest problem is that these methods are too easily exclusionary of dissenting or marginalized voices, making it too easy to rationalize the interpretations and views of dominant perspectives, especially Nussbaum's own. Both methods of justification

provide no guidance as to whom has the authority to police intuitions and why they have that authority; likewise, we are not given any indication as to which comprehensive doctrines are reasonable or which interpretations of a comprehensive doctrine are reasonable, and who has the authority to decide these questions and why they have that authority.

The following criteria of adequacy are not meant to be exhaustive, but provide a theorizer with substantive guidance by which she can judge her current methods of justification against. If it fails to satisfy these criteria, then I suggest re-evaluating one's current method. The desiderata for justifying a theory should (1) be cognizant of power dynamics, (2) remain self-critical, (3) have a mechanism to revise one's list or theory, and (4) set modest goals. I have shown that reflective equilibrium and overlapping consensus fail to satisfy these criteria. There may be other criteria, and I understand that identifying what those might be may force us to abandon Feminist Discourse Ethics in favor of a different method of justification. However, for now, FDE is able to account for the above criteria in a way that Nussbaum and traditional versions of discourse fail to do so.

FDE, which is greatly indebted to Alison Jaggar's *Feminist Practical Dialogue*, accepts the traditional Habermasian discourse ethics claim that everyone ought to be treated with respect and have an equal opportunity to shape the outcome of the debate. However, dialogue rarely occurs between socially-situated individuals of equal power. Thus, the following FDE constraints are proposed to help produce just norms: (1) accepting non-traditional forms of communication, (2) giving moral deference to non-dominant group members, (3) listening carefully by treating discursive participants as

informants and not as mere sources of information to which one gleans information, (5) accepting incommensurability between dialoguers, and recognizing the potential need for temporarily closed communities.

With respect to realizing the three central tenets of capabilities noted at the outset of this section, I argue that FDE as a method for justifying capabilities is superior to Nussbaum's reflective equilibrium and overlapping consensus. First, while I do not claim FDE is foolproof because it requires on-going discussions, it seems better situated to determine harmful outcomes and subject them to further scrutiny than Nussbaum's methods of justification. FDE welcomes all intuitions of those affected by the outcome and subjects them to criticism. It demands our most basic assumptions and intuitions be revisited, not to mention our conclusions. Having a mechanism that not only checks our conclusions, but the process by which that conclusion is reached, provides a multi-layered safeguard against harmful norms. The outcomes then do not simply represent a single perspective but, given the many layers of scrutiny in addition to ensuring marginalized peoples have a voice by giving them *prima facie* moral deference, a true representation of intuitions have been included.

Second, FDE does not shy away from the fact that it allows so-called mistaken and corrupt perspectives, but embraces them. For example, if education is on the list, it needs to be defended from more than the just the theorizer's perspective. FDE would demand reasons why education is valuable enough to be a primary good, how demanding it affects groups differently, and how to interpret what 'education' means. So by considering nearly all perspectives, FDE offers a more universal justification for capabilities than Nussbaum's methods of justification. To better garner genuine cross-

cultural support, my method of justification welcomes a wide range of incompatible worldviews to shape the outcome.

Finally, Nussbaum is adamant that her version of capabilities is able to address gender specific norms. However, as I have shown, Nussbaum fails to address her feminist critics that propose capabilities that challenge her list. For instance, Ingrid Robeyns argues in favor of “time-autonomy” as a central capability because it accounts for the unequal distribution of time commitments placed on women. FDE is able to better identify gender specific capabilities because the substantive constraints on the discourse create the proper conditions to achieve substantive equality, that is, for women (and members of non-dominant groups in general) an opportunity to genuinely shape the outcome. At best, Nussbaum speaks on behalf of marginalized group members (e.g., Indian women) but is unable to fully understand their commitments. If we want to generate a theory or list of capabilities that is truly inclusive and represents the group at hand, then we need give them an opportunity to speak. Feminist Discourse Ethics takes the real experiences of concrete individuals and provides an avenue for them to share their stories and shape the outcome of the discussion. So rather than generating highly abstract capabilities that provide little substantive guidance, FDE has the potential to produce a list of capabilities based according to the group’s needs, and, of course, if the list is failing to achieve its own goals, FDE has mechanisms in place to subject its own conclusions to scrutiny.

I have two concerns regarding whether Feminist Discourse Ethics as a method of justification can produce universal moral norms. First, FDE is likely to begin with small groups – perhaps even temporarily closed communities. However, the list of capabilities

is meant to gain cross-cultural support that applies to all those affected by the outcome. We seem to have reached an impasse – on the one hand, FDE works well with local communities (often with at least some shared understandings), and on the other, we are seeking a list that requires a method of justification that applies to everyone. Capabilities is a global moral theory, and so following the spirit of Nussbaum's commitments, its list too must be universal in scope. One could argue in favor of larger discursive communities to accommodate the scope of capabilities. However, this would create a similar problem that I noted in the first chapter. That is, the discursive community will produce norms that are either so vague they become meaningless or any substance added to them and they will be too exclusionary.

Second, the substantive constraints demanded by FDE seem to prevent it from producing truly universal moral norms. FDE requires discursive participants to pay moral deference to marginalized group members in hopes of ultimately bearing witness to their moral pain. This long and arduous process, while necessary to really understand another's perspective, requires a true understanding of not only what the speaker is saying, but also their greater socioeconomic context. In an attempt to grow this on a global scale, participants would need, in some sense, to learn the social contexts of people all over the world. While a fruitful endeavor, I question its practicality, since ultimately the goal is to create a list that is applicable to all people.

I do not believe the above concerns should cause us to abandon Feminist Discourse Ethics as the method of justification for generating a list of capabilities or defending the capabilities approach as a global moral theory. It satisfies the criteria of adequacy and meets the challenges that Martha Nussbaum fails to meet. I challenge

practitioners to consider FDE as they determine which capabilities are most relevant, how to resolve tragic dilemmas (since not all capabilities can be realized at a given moment), and how to best realize capabilities for a local community.

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